

ORDINANCE NO. 2002-8

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES RELATING TO THE COLLECTION AND DISPOSAL OF SOLID WASTE IN THE TOWN OF SOUTHWEST RANCHES, FLORIDA; AUTHORIZING THE IMPOSITION AND COLLECTION OF ANNUAL SOLID WASTE SERVICE ASSESSMENTS AGAINST SINGLE-FAMILY RESIDENTIAL PROPERTY THROUGHOUT THE TOWN OF SOUTHWEST RANCHES; PROVIDING FOR DEFINITIONS; ESTABLISHING THE PROCEDURES FOR IMPOSING SOLID WASTE SERVICE ASSESSMENTS; PROVIDING THAT SOLID WASTE SERVICE ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF THE ASSESSMENT ROLL; PROVIDING THAT THE LIEN FOR A SOLID WASTE SERVICE ASSESSMENT COLLECTED PURSUANT TO SECTIONS 197.3632 AND 197.3635, FLORIDA STATUTES, UPON PERFECTION SHALL ATTACH TO THE PROPERTY ON THE PRIOR JANUARY 1, THE LIEN DATE FOR AD VALOREM TAXES; PROVIDING THAT A PERFECTED LIEN SHALL BE EQUAL IN RANK AND DIGNITY WITH THE LIENS OF ALL STATE, COUNTY, DISTRICT, OR MUNICIPAL TAXES AND ASSESSMENTS AND SUPERIOR IN DIGNITY TO ALL OTHER PRIOR LIENS, MORTGAGES, TITLES, AND CLAIMS; AUTHORIZING THE IMPOSITION OF INTERIM ASSESSMENTS; PROVIDING PROCEDURES FOR COLLECTION OF SOLID WASTE SERVICE ASSESSMENTS; PROVIDING THAT ALL ORDINANCES AND PARTS OF ORDINANCES AND ALL RESOLUTIONS AND PARTS OF RESOLUTIONS IN CONFLICT HEREWITH BE REPEALED TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Southwest Ranches deems it to be in the best interests of the citizens and residents of the Town to implement a recurring annual solid waste special assessment program which will provide funding for the needs of the City's single-family residences relating to solid waste collection, disposal, and other programs; and

WHEREAS, the imposition of a solid waste service assessment will provide a more cost effective means for providing solid waste services to the residents of the Town of Southwest Ranches; and

WHEREAS, the Town Council of the Town of Southwest Ranches is desirous of establishing a method for assessing the cost of solid waste services in a manner that will insure that there are adequate funds to provide for the level of services deemed

necessary and proper to promote the health, safety, and general welfare of its citizens;
and

WHEREAS, the Town Council hereby determines the necessity to establish a procedure for the funding of a special assessment program to insure that the cost of the solid waste services are borne on a fair and reasonable basis by the single-family residences who receive a special benefit from said services;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section A: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and are hereby made a specific part of this Ordinance.

Section B: That the Town Code is amended to read:

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ARTICLE 1 INTRODUCTION

SECTION 1.0: SOLID WASTE SERVICE ASSESSMENT

SECTION 1.1: DEFINITIONS. As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

“Annual Rate Resolution” means the resolution described in Section 2.10 hereof, establishing the rate at which a Solid Waste Service Assessment for a specific Fiscal Year will be computed. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which a Solid Waste Service Assessment is imposed or re-imposed.

“Assessed Property” means all parcels of land included on the Assessment Roll that receive a special benefit from the delivery of the Solid Waste collection and disposal services, programs or facilities.

“Assessment Roll” means the special assessment roll relating to a Solid Waste Service Assessment approved by a Final Assessment Resolution pursuant to Section 2.8 hereof or an Annual Rate Resolution pursuant to Section 2.10 hereof.

“Building” means any structure, whether temporary or permanent, built for support, shelter or enclosure of persons, chattel, or property of any kind. This term shall include mobile homes or any vehicles serving in any way the function of a building.

“Clean Debris” means any Solid Waste which is virtually inert and which is not a pollution threat to groundwater or surface waters and is not a fire hazard and which is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including embedded pipe or steel, brick, glass, and ceramics.

“Commercial Collection Service” means the collection and transportation of Solid Waste from Commercial Property by the Owner to a Solid Waste disposal facility, or which results in the payment of fees or charges to an authorized commercial collection service provider for disposal of the Solid Waste.

“Commercial Property” means all Improved Property other than Residential Property.

“Construction and Demolition Debris” means non-hazardous materials generally considered not to be water soluble, or a combination of such materials, which consist of the remnants or debris from the construction, reconstruction, remodeling or demolition of any structure, and shall include, but not be limited to, metal, metal products, concrete, glass, rock, roofing materials, asphalt, wood tar, brick cement and gypsum board.

“Dwelling Unit” means a building, or portion thereof, which is located upon Residential Property and lawfully used for residential purposes, consisting of one or more rooms arranged, designed, used, or intended to be used as living quarters for one family only.

“Final Assessment Resolution” means the resolution described in Section 2.8 hereof which shall confirm, modify, or repeal the Initial Assessment Resolution and which shall be the final proceeding for the initial imposition of Solid Waste Service Assessments.

“Fiscal Year” means that period commencing October 1st of each year and continuing through the next succeeding September 30th, or such other period as may be prescribed by law as a fiscal year for the Town.

“Garbage” means animal, fruit and vegetable waste, either alone or with or in combination with other putrescible matter resulting from the handling, storage, sale, preparation, cooking, serving, processing, slaughter, manufacture or consumption of animal, fruit or vegetable matter, which is subject to decomposition or decay, and any container of such material.

“Government Property” means property owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district or a municipal corporation.

“Hazardous Waste” means Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

“Improved Property” means all property within the incorporated area of the Town on which a building or other improvements, including but not limited to, the provision of retail electrical service to such property, have been placed or constructed, which improvements result in such property generating Solid Waste or being capable of generating Solid Waste.

“Initial Assessment Resolution” means the resolution described in Section 2.3 hereof which shall be the initial proceeding for the identification of the Solid Waste Assessed Cost for which an assessment is to be made and for the imposition of a Solid Waste Assessment.

“Land Clearing Debris” means vegetative matter resulting from a comprehensive land clearing operation, but does not include Yard Trash.

“Ordinance” means this Solid Waste Service Assessment Ordinance.

“Owner” shall mean the Person reflected as the owner of Assessed Property on the Tax Roll.

“Person” means any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

“Preliminary Rate Resolution” means the resolution described in Section 2.10 hereof initiating the annual process for updating the Assessment Roll and directing the re-imposition of Solid Waste Assessments pursuant to an Annual Rate Resolution.

“Property Appraiser” means the Broward County Property Appraiser.

“Recovered Materials” means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the Solid Waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal.

“Residential Property” means all Improved Property used as a single-family Dwelling Unit.

“Rubbish” means refuse, accumulation of paper, excelsior, rags, wooden or paper boxes or containers, sweepings, and all other accumulations of a nature other than Garbage which are usual to housekeeping and to the operation of stores, offices and other business places.

“Solid Waste” includes Garbage, Rubbish, Yard Trash, Clean Debris, White Goods, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations; but does not include Special Waste or Hazardous Waste.

“Solid Waste Service Assessment” means a special assessment lawfully imposed by the Town against Assessed Property to fund all or any portion of the cost of the provision of Solid Waste collection and disposal services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of Assessed Property.

“Solid Waste Cost” means the amount necessary to fund the Solid Waste collection, disposal, and recycling activities of the Town allocable to Assessed Property during a Fiscal Year and shall include, but not be limited to: (A) the cost, whether direct or indirect, of all services, programs or facilities provided by the Town, or through contractual arrangements with the Town relating to Solid Waste management and disposal activities; (B) the cost of any indemnity or surety bonds and premiums for insurance; (C) the cost of salaries, volunteer pay, workers’ compensation insurance, or other employment benefits; (D) the cost of computer services, data processing, and communications; (E) the cost of training, travel and per diem; (F) the recovery on unpaid or delinquent fees or charges advanced by the Town and due for Solid Waste management and disposal services, programs or facilities allocable to specific parcels; (G) the cost of engineering, financial, legal, and other professional services; (H) all costs associated with the structure, implementation, collection, and enforcement of the Solid Waste Service Assessments or a prior year’s assessment for a comparable service, facility or program, including any service charges of the Tax Collector or Property Appraiser; (I) all other costs and expenses necessary or incidental to the acquisition, provision, or delivery of the services, programs or facilities funded by the Solid Waste Service Assessment, and such other expenses as may be necessary or incidental to any related financing authorized by the Town Council; (J) a reasonable amount for contingency and anticipated delinquencies and uncollectible Solid Waste Service Assessments; and (K) reimbursement to the Town or any other Person for any monies advanced for any costs incurred by the Town or such Person in connection with any of the foregoing items of Solid Waste Cost.

“Special Waste” means materials that can require special handling and management, including but not limited to, Construction and Demolition Debris, Land Clearing Debris, Hazardous Waste, or any other unusual material for which a separate disposal charge is necessary or required.

“Tax Collector” means the Department of Finance and Administrative Services as described in Article IV of the Broward County Charter.

“Tax Roll” means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

“Town” means the Town of Southwest Ranches, Florida.

“Town Administrator” means the chief executive officer and the head of the administrative branch of the Town as defined in Article III, Section 3.01 of the Town Charter, or his/her designee.

“Town Clerk” means the person assigned by the Town Administrator who provides those services in support of the Town Administrator and Town Council in Town record-keeping and preparing policy documents and records in support of Town Council regular meetings, policy setting meetings and workshops.

“Town Council” means the governing body of the Town of Southwest Ranches, Florida.

“TRIM Notice” means the “Notice of Proposed Property Taxes and Proposed or Adopted Non-Ad Valorem Assessments” mailed by the Property Appraiser no later than August 24th of each year advising Persons of proposed taxes and non-ad valorem assessments being considered for imposition on property owned by the Person.

“Uniform Assessment Collection Act” means Section 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

“White Goods” means inoperative and discarded refrigerators, ranges, water heaters, freezers and other similar domestic and commercial large appliances.

“Yard Trash” means vegetative matter resulting from routine periodic landscaping maintenance.

SECTION 1.2: INTERPRETATION. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Ordinance; and the term “hereafter” means after, and the term “heretofore” mean before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 1.3: GENERAL FINDINGS. It is hereby ascertained, determined, and declared that:

(A) Pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the Town Council has all powers of local self-government to perform municipal functions, render municipal services except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of Town Ordinances.

(B) The Town Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Town Council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Solid Waste collection and disposal services, facilities or programs of the Town.

(C) The purpose of this Ordinance is to (1) provide procedures and standards for the imposition of annual Solid Waste Service Assessments under the general home rule powers of a municipality to impose special assessments; (2) authorize a procedure for the funding of Solid Waste collection and disposal services, facilities, or programs providing special benefits to property within the Town; and, (3) legislatively determine the special benefit provided to Assessed Property from the provision of collection and disposal services by the Town.

(D) Pursuant to Section 403.706(1), Florida Statutes, the Town has the responsibility and authority to provide for the collection and disposal of Solid Waste generated within its incorporated area to appropriate Solid Waste disposal facilities.

(E) Due to widely varied production of Solid Waste among the many and varied types of non single-family Residential Property, the providers thereof bill and collect directly from Owners or residents of said Property and non single-family residential property and commercial property is not included in the herein special assessment program.

(F) Any single-family residential customer not listed on the Tax Rolls for any reason shall be billed by the Franchise holder and payments made by said single-family resident shall be made to the Franchise holder.

(G) Whether imposed town wide or less than town wide, the imposition of a recurring annual Solid Waste Service Assessment is an alternative, equitable and efficient method to fairly and reasonably apportion and recover the Solid Waste management and disposal costs experienced by the City among the parcels of single-family Residential Property within the area assessed.

(H) The use of the uniform method of collection authorized by the Uniform Assessment Collection Act provides a mechanism to equitably and efficiently collect Solid Waste Service Assessments for all single-family residences.

(I) The annual Solid Waste Service Assessments to be imposed pursuant to this Ordinance shall constitute non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act.

(J) The Solid Waste Service Assessment imposed pursuant to this Ordinance is imposed by the Town Council, not the Broward County Board of County Commissioners, Property Appraiser, or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Ordinance shall be construed as ministerial.

SECTION 1.4: LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT. It is hereby ascertained and declared that the Solid Waste services, facilities, and programs of the Town provide a special benefit to single-family residential property within the Town that is improved by the existence of a Dwelling Unit or Building based upon the following legislative determinations:

(A) Solid Waste collection and disposal services, facilities and programs furnished by the Town possess a logical relationship to the use and enjoyment of Residential Property by providing: (1) the required use of Solid Waste collection and disposal services, facilities and programs by the Owners and occupants of single-family Residential Property to properly, safely, and cost effectively dispose of Solid Waste generated on such property, (2) better service to Owners and tenants, (3) the enhancement of environmentally responsible use and enjoyment of single-family Residential Property, and (4) the protection of property values and the health and safety of the Owners and occupants of single-family Residential Property resulting from the uniform delivery and availability of such services, facilities, and programs.

(B) The provision of comprehensive and mandatory Solid Waste collection and disposal services, facilities and programs furnished by or through the Town to single-family Residential Property enhances and strengthens the relationship of such services and programs to the use and enjoyment of Residential Property within the Town.

ARTICLE II

ANNUAL SOLID WASTE COLLECTION AND DISPOSAL ASSESSMENTS

SECTION 2.1: GENERAL AUTHORITY. The Town Council is hereby authorized to impose an annual Solid Waste Service Assessment to fund all or any portion of the Solid Waste Cost upon benefited property at a rate of assessment based on the special benefit accruing to such property from the Town's provision of Solid Waste collection and disposal services, facilities and programs. All Solid Waste Service Assessments shall be imposed in conformity with the procedures set forth in this Article II.

SECTION 2.2: INITIAL PROCEEDINGS. The initial proceeding for the imposition of a Solid Waste Assessment shall be the adoption of an Initial Assessment Resolution by the Town Council (A) containing a brief and general description of the Solid Waste services, facilities, or programs to be provided; (B) estimating the Solid Waste Assessed Cost to be assessed; (C) describing the method of apportioning the

Solid Waste Assessed Cost and the computation of the Solid Waste Assessment for specific properties; (D) providing a summary description of the parcels of property (conforming to the description contained on the Tax Roll) located within the Town that receive a special benefit from the provision of Solid Waste services, facilities, or programs or describing a specific geographic area in which such service, facility, or program will be provided; (E) establishing an assessment rate for the upcoming Fiscal Year; and (F) directing the Town Administrator to (1) prepare the Initial Assessment Roll, as required by Section 2.3 hereof, (2) publish the notice required by Section 2.6 hereof, and (3) mail or arrange the mailing of the notice required by Section 2.7 hereof using information then available from the Tax Roll.

SECTION 2.3: INITIAL ASSESSMENT ROLL.

(A) The Town Administrator shall prepare, or direct the preparation of, the Initial Assessment Roll, which shall contain the following:

- (1) A summary description of all Assessed Property conforming to the description contained on the Tax Roll.
- (2) The name of the Owner of the Assessed Property.
- (3) The amount of the Solid Waste Assessment to be imposed against each such parcel of Assessed Property.

(B) The Initial Assessment Roll shall be retained by the Town Administrator and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Solid Waste Assessment for each parcel of property can be determined by use of a computer terminal available to the public.

SECTION 2.4: ASSESSMENT AMOUNT. The amount of the Solid Waste Service Assessment imposed in a Fiscal Year against a parcel of Assessed Property shall be determined pursuant to the rates, fees and charges established by the Town's solid waste Franchise Agreement, or in the alternative, pursuant to an apportionment methodology based upon a classification of property designed to provide a fair and reasonable apportionment of the Solid Waste Cost among properties on a basis reasonably related to the special benefit provided by Solid Waste collection and disposal services, facilities or programs funded with assessment proceeds.

SECTION 2.5: DELINQUENT CHARGES. Any unpaid or delinquent fees, charges, or assessments due for Solid Waste management and disposal services or facilities which are allocable to specific parcels of Assessed Property may be included in the annual Solid Waste Service Assessment for such parcels. In such an event, any existing lien on each affected parcel for unpaid or delinquent fees, charges, or

assessments shall be supplanted by the lien resulting from the inclusion of such unpaid or delinquent fees, charges, or assessments in the amount of the Solid Waste Service Assessment.

SECTION 2.6: NOTICE BY PUBLICATION. The Town Administrator shall publish, or direct the publication of, once in a newspaper of general circulation within the Town a notice stating that at a meeting of the Town Council on a certain day and hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular, adjourned, or special meeting, the Town Council will hear objections of all interested persons to the Final Assessment Resolution which shall establish the rate of assessment and approve the Assessment Roll. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Such notice shall include (A) a geographic depiction of the property subject to the Solid Waste Service Assessment; (B) a brief and general description of the Solid Waste collection and disposal services, facilities, or programs to be provided; (C) the rate of assessment; (D) the procedure for objecting provided in Section 2.8 hereof; (E) the method by which the Solid Waste Service Assessment will be collected; and, (F) a statement that the Initial Assessment Roll is available for inspection at the office of the Town Administrator and all interested persons may ascertain the amount to be assessed against a parcel of Assessed Property at the office of the Town Administrator.

SECTION 2.7: NOTICE BY MAIL. In addition to the published notice required by Section 2.6, the Town Administrator shall provide notice, or direct the provision of notice, of the proposed Solid Waste Service Assessment by mail to the Owner of each parcel of property (except Government Property) subject to the Solid Waste Service Assessment. The Town Administrator, at his/her discretion, may utilize the TRIM notice process to serve as the required notice by mail provided that such notice shall include (A) the purpose of the Solid Waste Service Assessment; (B) the rate of the assessment to be levied against each parcel of property; (C) the unit of measurement applied to determine the Solid Waste Service Assessment; (D) the total revenue to be collected by the Town from the Solid Waste Service Assessment; (E) a statement that failure to pay the Solid Waste Service Assessment will cause a tax certificate to be issued against the property or foreclosure proceedings to be instituted, either of which may result in a loss of title to the property; (F) a statement that all affected Owners have a right to appear at the hearing and to file written objections with the Town Council within 20 days of the notice; and (G) the date, time, and place of the hearing. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each Owner at such address as is shown on the Tax Roll. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. The Town Administrator may provide proof of such notice by affidavit. Failure of the Owner to receive such notice due to mistake or inadvertence shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a

Solid Waste Service Assessment imposed by the Town Council pursuant to this Ordinance.

SECTION 2.8: ADOPTION OF FINAL ASSESSMENT RESOLUTION. At the time named in such notice, or to which an adjournment or continuance may be taken by the Town Council, the Town Council shall receive any written objections of interested persons and may then, or at any subsequent meeting of the Town Council adopt the Final Assessment Resolution which shall (A) establish the rate of assessment to be imposed in the upcoming Fiscal Year; (B) approve the Assessment Roll, with such amendments as it deems just and right; and (C) determine the method of collection. The adoption of the Final Assessment Resolution by the Town Council shall constitute a legislative determination that all parcels assessed derive a special benefit from the Solid Waste collection and disposal services, facilities, or programs to be provided and a legislative determination that the Solid Waste Service Assessments are fairly and reasonably apportioned among the properties that receive the special benefit. All objections to the Final Assessment Resolution shall be made in writing, and filed with the Town Administrator at or before the time or adjourned time of such hearing. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which Solid Waste Service Assessments are imposed or re-imposed hereunder.

SECTION 2.9: EFFECT OF FINAL ASSESSMENT RESOLUTION. The Solid Waste Service Assessments for the initial Fiscal Year shall be established upon adoption of the Final Assessment Resolution. The adoption of the Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the rate of assessment, the Assessment Roll, and the levy and lien of the Solid Waste Service Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the Town Council action on the Final Assessment Resolution.

SECTION 2.10: ADOPTION OF ANNUAL RATE RESOLUTION.

(A) The Town Council shall adopt an Annual Rate Resolution during its budget adoption process for each Fiscal Year following the initial Fiscal Year for which a Solid Waste Service Assessment is imposed hereunder.

(B) The initial proceedings for the adoption of the Annual Rate Resolution shall be the adoption of a Preliminary Rate Resolution by the Town Council (1) containing a brief and general description of the Solid Waste collection and disposal services, facilities, or programs to be provided; (2) determining the Solid Waste Cost to be assessed for the upcoming Fiscal Year; (3) establishing the assessment rate for the upcoming Fiscal Year; (4) authorizing the date, time, and place of a public hearing to receive and consider comments from the public and consider the adoption of the

Annual Rate Resolution for the upcoming Fiscal Year; and (5) directing the Town Administrator to (a) update the Assessment Roll, (b) provide notice by publication and mail to affected Owners in the event circumstances described in subsection (F) of this Section so require, and (c) direct and authorize any supplemental or additional notice deemed proper, necessary or convenient by the Town.

(C) The Annual Rate Resolution shall (1) establish the rate of assessment to be imposed in the upcoming Fiscal Year and (2) approve the Assessment Roll for the upcoming Fiscal Year with such adjustments as the Town Council deems just and right. The Assessment Roll shall be prepared in accordance with the method of apportionment set forth in the Initial Assessment Resolution, or any subsequent Preliminary Rate Resolution, together with modifications, if any, and as confirmed in the Final Assessment Resolution or as provided in the Annual Rate Resolution.

(D) Nothing herein shall preclude the Town Council from providing annual notification to all Owners of Assessed Property in the manner provided in either or both Sections 2.6 or 2.7 hereof.

(E) Nothing herein shall preclude the Town Council from establishing by resolution a maximum rate of assessment provided that notice of such maximum assessment rate is provided pursuant to Section 2.6 or 2.7 hereof.

(F) In the event (1) the proposed Solid Waste Service Assessment for any Fiscal Year exceeds the maximum rate of assessment adopted by the Town Council and included in notice previously provided to the Owners of Assessed Property pursuant to Sections 2.6 and 2.7 hereof, (2) the purpose for which the Solid Waste Service Assessment is imposed or the use of the revenue from the Solid Waste Service Assessment is substantially changed from that represented by notice previously provided to the Owners of Assessed Property pursuant to Sections 2.6 and 2.7 hereof, (3) Assessed Property is reclassified or the method of apportionment is revised or altered resulting in an increased Solid Waste Service Assessment from that represented by notice previously provided to the Owners of Assessed Property pursuant to Sections 2.6 and 2.7 hereof, or (4) an Assessment Roll contains Assessed Property that was not included on the Assessment Roll approved for the prior Fiscal Year, notice shall be provided by publication and mail to the Owners of such Assessed Property. Such notice shall substantially conform with the notice requirements set forth in Sections 2.6 and 2.7 hereof and inform the Owner of the date, time, and place for the adoption of the Annual Rate Resolution. The failure of the Owner to receive such notice due to mistake or inadvertence shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the Town Council pursuant to this Ordinance.

(G) As to any Assessed Property not included on an Assessment Roll approved by the adoption of the Final Assessment Resolution or a prior year's Annual

Rate Resolution, the adoption of the succeeding Annual Rate Resolution shall be the final adjudication of the issues presented as to such Assessed Property (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the rate of assessment, the Assessment Roll, and the levy and lien of the Solid Waste Service Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the Town Council action on the Annual Rate Resolution. Nothing contained herein shall be construed or interpreted to affect the finality of any prior fee, charge, or assessment imposed by the Town or any Solid Waste Service Assessment not challenged within the required 20 day period for those Solid Waste Service Assessments imposed against Assessed Property by the inclusion of the Assessed Property on an Assessment Roll approved in the Final Assessment Resolution or any subsequent Annual Rate Resolution.

(H) The Assessment Roll, as approved by the Annual Rate Resolution, shall be delivered to the Tax Collector as required by the Uniform Assessment Collection Act, by the Town Administrator or his/her designee or Property Appraiser if so designated, or if the alternative method described in Section 3.2 hereof is used to collect the Solid Waste Service Assessments, such other official as the Town Council by resolution shall designate. If the Solid Waste Service Assessment against any property shall be sustained, reduced, or abated by any court, an adjustment shall be made on the Assessment Roll.

SECTION 2.11: LIEN OF SOLID WASTE SERVICE ASSESSMENTS.

Upon the adoption of the Assessment Roll, all Solid Waste Service Assessments shall constitute a lien against Assessed Property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims, until paid. The lien for a Solid Waste Service Assessment shall be deemed perfected upon adoption by the Town Council of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable. The lien for a Solid Waste Service Assessment collected under the Uniform Assessment Collection Act shall attach to the property included on the Assessment Roll as of the prior January 1, the lien date for ad valorem taxes imposed under the Tax Roll. The lien for a Solid Waste Service Assessment collected under the alternative method of collection provided in Section 3.2 shall be deemed perfected upon adoption by the Town Council of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable, and shall attach to the property on such date of adoption.

SECTION 2.12: REVISIONS TO SOLID WASTE SERVICE ASSESSMENTS.

If any Solid Waste Service Assessment made under the provisions of this Ordinance is either in whole or part annulled, vacated, or set aside by judgment of any court, or if the Town Council is satisfied that any such Solid Waste Service Assessment is so irregular or defective that the same cannot be enforced or collected, or

if the Town Council has omitted any property on the Assessment Roll which property should have been so included, the Town Council may take all necessary steps to impose a new Solid Waste Service Assessment against any property benefited by the Solid Waste Costs, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Solid Waste Service Assessment is annulled, vacated, or set aside, the Town Council may obtain and impose other Solid Waste Service Assessments until a valid Solid Waste Service Assessment is imposed.

SECTION 2.13: PROCEDURAL IRREGULARITIES. Any informality or irregularity in the proceedings in connection with the levy of any Solid Waste Service Assessment under the provisions of this Ordinance shall not affect the validity of the same after the approval thereof, and any Solid Waste Service Assessment as finally approved shall be competent and sufficient evidence that such Solid Waste Service Assessment was duly levied, that the Solid Waste Service Assessment was duly made and adopted, and that all other proceedings adequate to such Solid Waste Service Assessment were duly had, taken, and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this Section, any party objecting to a Solid Waste Service Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

SECTION 2.14: CORRECTION OF ERRORS AND OMISSIONS.

(A) No act of error or omission on the part of the Property Appraiser, Tax Collector, Town Administrator, Town Council, franchise holder, or their deputies or employees, shall operate to release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the Town Council under the provisions of this Ordinance.

(B) When it shall appear that any Solid Waste Service Assessment should have been imposed under this Ordinance against a parcel of property specially benefited by the provision of Solid Waste Service collection and disposal services, facilities, or programs, but that such property was omitted from the Assessment Roll or was not listed on the Tax Roll as an individual parcel of property as of the effective date of the Assessment Roll approved by the Annual Rate Resolution for any upcoming Fiscal Year, the Town Council may, upon provision of notice by mail provided to the Owner of the omitted or erroneously assessed parcel in the manner and form provided in Section 2.7, impose the applicable Solid Waste Service Assessment for the Fiscal Year in which such error or omission is discovered, in addition to the applicable Solid Waste Service Assessment due for the prior two Fiscal Years. Such Solid Waste Service Assessment shall constitute a lien against Assessed Property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments, and superior in rank and dignity to all other prior liens, mortgages, titles, and claims in and to or

against the real property involved, shall be collected as provided in Article III hereof, and shall be deemed perfected on the date of adoption of the resolution imposing the omitted or delinquent assessments.

(C) Prior to the delivery of the Assessment Roll to the Tax Collector in accordance with the Uniform Assessment Collection Act, the Town Administrator shall have the authority at any time, upon his or her own initiative or in response to a timely filed petition from the Owner of any property subject to a Solid Waste Service Assessment, to reclassify property based upon presentation of competent and substantial evidence, and correct any error in applying the Solid Waste Service Assessment apportionment method to any particular parcel of property not otherwise requiring the provision of notice pursuant to the Uniform Assessment Collection Act. Any such correction shall be considered valid ab initio and shall in no way affect the enforcement of the Solid Waste Service Assessment imposed under the provisions of this Ordinance. All requests from affected property owners for any such changes, modifications or corrections shall be referred to, and processed by, the Town Administrator, or his/her designee, and not the Property Appraiser or Tax Collector.

(D) After the Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to correcting errors and insolvencies on the Tax Roll upon timely written request and direction of the Town Administrator, or his/her designee.

ARTICLE III

COLLECTION AND USE OF SOLID WASTE SERVICE ASSESSMENTS

SECTION 3.1: METHOD OF COLLECTION. Unless otherwise directed by the Town Council, the Solid Waste Service Assessments shall be collected pursuant to the uniform method provided in the Uniform Collection Assessment Act, and the Town shall comply with all applicable provisions of the Uniform Collection Assessment Act. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by the Uniform Collection Assessment Act.

SECTION 3.2: ALTERNATIVE METHOD OF COLLECTION. In lieu of utilizing the Uniform Collection Assessment Act, the Town may elect to collect the Solid Waste Service Assessments by any other method which is authorized by law or under the alternative collection method provided by this Section:

(A) The Town shall provide Solid Waste Service Assessment bills by first class mail to the Owner of each affected parcel of property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Solid Waste Service Assessment, (2) a description of the unit of measurement used to determine the Solid Waste Service Assessment, (3) the number of such units contained within the parcel of

property, (4) the total amount of the Solid Waste Service Assessment imposed against the parcel for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Solid Waste Service Assessment is due, and (7) a statement that the Solid Waste Service Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from the imposition of the Solid Waste Service Assessments shall be recorded in the Official Records of the County. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The Town shall have the right to foreclose and collect all delinquent Solid Waste Service Assessments in the manner provided by law for the foreclosure of mortgages on real property or appoint or retain an agent to institute such foreclosure and collection proceedings. A Solid Waste Service Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The Town or its agent shall notify any property owner who is delinquent in payment of his or her Solid Waste Service Assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the Town or its agent will either (1) initiate a foreclosure action or suit in equity and cause the foreclosure of such property subject to a delinquent Solid Waste Service Assessment in a method now or hereafter provided by law for foreclosure of mortgages on real property, or (2) cause an amount equivalent to the delinquent Solid Waste Service Assessment, not previously subject to collection using the uniform method under the Uniform Assessment Collection Act, to be collected on the tax bill for a subsequent year.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered herein. At the sale pursuant to decree in any such action, the Town may be the purchaser to the same extent as any Person. The Town or its agent may join in one foreclosure action in the collection of Solid Waste Service Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent Owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the Town and its agents, including reasonable attorney fees, in collection of such delinquent Solid Waste Service Assessments and any other costs incurred by the Town as a result of such delinquent Solid Waste Service Assessments and the same shall be collectible as part of or in addition to, the costs of the action.

(E) In lieu of foreclosure, any delinquent Solid Waste Service Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the Owner in the manner required by the Uniform Assessment Collection Act and this

Ordinance, and (2) any existing lien of record on the affected parcel for the delinquent Solid Waste Service Assessment is supplanted by the lien resulting from certification of the Assessment Roll, as applicable, to the Tax Collector via the Property Appraiser.

(F) Notwithstanding the Town's use of an alternative method of collection, the Town Administrator shall have the same power and authority to correct errors and omissions as provided to him or county officials in Section 2.14 hereof.

(G) Any Town Council action required in the collection of Solid Waste Service Assessments may be by resolution.

SECTION 3.3: GOVERNMENT PROPERTY.

(A) If Solid Waste Service Assessments are imposed against Government Property, the Town shall provide Solid Waste Service Assessment bills by first class mail to the Owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Solid Waste Service Assessment, (2) a description of the unit of measurement used to determine the amount of the Solid Waste Service Assessment, (3) the total amount of the parcel's Solid Waste Service Assessment for the appropriate period, (4) the location at which payment will be accepted, and (5) the date on which the Solid Waste Service Assessment is due.

(B) Solid Waste Service Assessments imposed against Government Property shall be due on the same date as all other Solid Waste Service Assessments and, if applicable, shall be subject to the same discounts for early payment.

(C) A Solid Waste Service Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The Town shall notify the Owner of any Government Property that is delinquent in payment of its Solid Waste Service Assessment within 60 days from the date such assessment was due. Such notice shall state that the Town will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent Owners of Government Property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the Town, including reasonable attorney fees, in collection of such delinquent Solid Waste Service Assessments and any other costs incurred by the Town as a result of such delinquent Solid Waste Service Assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) As an alternative to the foregoing, a Solid Waste Service Assessment imposed against Government Property may be collected as a surcharge on a utility bill provided to such Government Property in periodic installments with a remedy of a mandamus action in the event of non-payment. The Town Council may contract for such billing services with any utility, whether or not such utility is owned by the Town.

ARTICLE IV

GENERAL PROVISIONS

SECTION 4.1: APPLICABILITY. This Ordinance and the Town's authority to impose assessments pursuant hereto shall be applicable throughout the Town.

SECTION 4.2: ALTERNATIVE METHOD.

(A) This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to the powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the Town, shall be liberally construed to effect the purposes hereof.

(B) Nothing herein shall preclude the Town Council from directing and authorizing, by resolution, the combination with each other of (1) any supplemental or additional notice deemed proper, necessary, or convenient by the Town, (2) any notice required by this Ordinance, or (3) any notice required by law, including the Uniform Collection Assessment Act.

SECTION 4.3: SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 4.4: CONFLICTS. All ordinances or part of ordinances and all resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4.5: EFFECTIVE DATE. This Ordinance shall be in force and shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING this 13 of June, 2002.

PASSED ON SECOND READING this 24th day of June, 2002.

MECCA FINK, MAYOR

ATTEST:

ARIELLE TYNER, TOWN CLERK

APPROVED AS TO FORM AND CORRECTNESS:

GARY A. POLIAKOFF, J.D., TOWN ATTORNEY