

Agenda Report

DATE: November 4, 2002

TO: CITY COUNCIL

FROM: CITY MANAGER

SUBJECT: INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING CHAPTERS 8.60 AND 8.61 OF THE PASADENA MUNICIPAL CODE ("SOLID WASTE" AND "SOLID WASTE COLLECTION FRANCHISE SYTEM") REGARDING RECYCLING REQUIREMENTS FOR THE COLLECTION OF SOLID WASTE AND RELATED AMENDMENTS.

RECOMMENDATION

It is recommended that the City Council:

1. Acknowledge that the ordinance amending Chapters 8.60 and 8.61 of the Pasadena Municipal Code ("solid waste and solid waste collection franchise system") is exempt from the California Environmental Quality Act. Pursuant to CEQA Guidelines, General Rule, Section 1506 (b) (3), the proposed project does not have the potential to result in a significant effect on the environmental under CEQA.
2. Approve first reading of the Ordinance amending Chapters 8.60 and 8.61 of the Pasadena Municipal Code ("solid waste" and "solid waste collection franchise system") to require non-exclusive solid waste franchise haulers to recycle 50% of all materials collected and make other modifications to the chapters as detailed in the Ordinance Fact Sheet.
3. Direct the City Clerk's office to file the Notice of Exemption with the Los Angeles County Recorder's office.

BACKGROUND

On July 22, 2002, the City Council directed the City Attorney to amend Chapters 8.60 and 8.61, of the Pasadena Municipal Code ("solid waste and solid waste collection franchise system") to increase recycling requirements and diversion for the non-exclusive solid waste franchise system for collection of solid waste. Amendment of this ordinance requiring specific minimum recycling goals is a critical component of the City

of Pasadena's Plan of Correction, submitted to the California Integrated Waste Management Board on September 5, 2002, requesting a time extension to achieve 50% disposal diversion as mandated by AB 939. The City's Plan was approved and the requested time extension was granted through December 31, 2003.

Although the residential sector has risen to the task in terms of increased recycling service with implementation of the Pay-As-You-Throw program, the burden of increased recycling in the commercial sector has not been as successful. More than half the waste stream generated in the City of Pasadena is generated in the commercial and multi-family sector. The proposed ordinance changes would provide staff with stronger leverage to ensure the 50% recycling mandate is equally applied to all franchise haulers and to provide consequences for failure to comply with the increased terms and conditions.

Recycling has been and continues to be a challenge in the commercial waste stream serviced by franchise haulers and including refuse generated by multi-family residential units, businesses, and industrial facilities in the community. The non-exclusive solid waste franchise haulers must increase their level of recycling and diversion efforts in order for the City to successfully achieve its AB 939 diversion mandate.

Although the actual average recycling amongst franchisees increased from 12% in 1995 to 30% in 2001, these "best efforts" of individual haulers are hampering Pasadena's ability to meet its Citywide diversion rate of 50% and puts Pasadena at risk of either a State compliance order or potential fines. The proposed modifications will make it incumbent on the franchisees to join the City in demonstrating not just "best efforts" but "best management practices as measured by specific performance measures" in order to retain their privilege to operate within Pasadena

OUTREACH

Staff held two workshops, August 29, 2002 and September 17, 2002, for all current and proposed franchisees to introduce them to the pending ordinance changes. Letters of invitation were sent to each hauler. The first workshop outlined the objectives of the proposed revisions to Chapters 8.60 and 8.61 of the Pasadena Municipal Code. The second workshop reviewed the draft language. Both workshops provided an opportunity for questions, answers and suggestions. Written comments were accepted until the close of business on September 20, 2002.

On October 7, 2002, franchisees waiting to be granted a non-exclusive franchise for solid waste collection were sent a copy of the proposed ordinance with amendments to Chapters 8.60 and 8.61 of the Pasadena Municipal Code. These 17 franchisees were required to sign and return a letter of understanding of all proposed changes to the Ordinance, including the provisions for assigning liquidated damages for failure to meet minimum requirements, no later than October 17, 2002.

Staff recommends that City Council approve the modifications to Chapters 8.60 and 8.61 of the Pasadena Municipal Code (“solid waste and solid waste collection franchise system”) regarding increased recycling requirements for the non-exclusive solid waste collection system.

ENVIRONMENTAL IMPACT

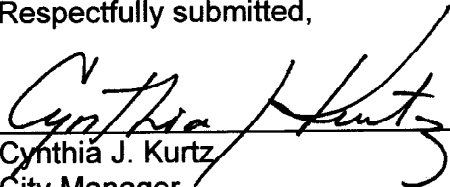
The environmental Administrator has determined that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 1506 (b) (3), which states the following: “(t)he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

FISCAL IMPACT

By amending Chapters 8.60 and 8.61 of the Pasadena Municipal Code ("solid waste" and "solid waste collection franchise system") to require that non-exclusive solid waste franchise haulers recycle 50% of all materials collected and comply with the other proposed modifications to the chapters as detailed in the Ordinance Fact Sheet, the City of Pasadena will continue to avoid potential fines up to \$10,000 per day levied by the State of California.

Limiting the number of franchise haulers operating in the City who cannot comply with such ordinance changes will not result in a loss of revenue. Franchise haulers do not bring new business to the City of Pasadena; rather they compete with other haulers for existing customers and accounts.


Respectfully submitted,


Cynthia J. Kurtz
City Manager

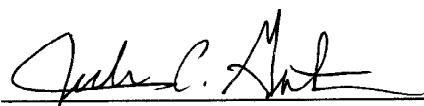
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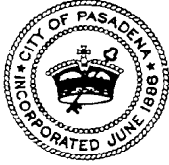

Carmen Rubio
Program Coordinator

Reviewed by:


Jimmy S. Berryhill, Administrator
Street Maint. & Int. Waste Mngmnt. Div.

Approved by:


Julie A. Gutierrez, Director
Department of Public Works



Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: November 4, 2002

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTERS 8.60 AND 8.61 OF THE PASADENA MUNICIPAL CODE ("SOLID WASTE" AND "SOLID WASTE COLLECTION FRANCHISE SYSTEM") REGARDING RECYCLING REQUIREMENTS FOR THE COLLECTION OF SOLID WASTE AND RELATED AMENDMENTS.

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTERS 8.60 AND 8.61 OF THE PASADENA MUNICIPAL CODE ("SOLID WASTE" AND "SOLID WASTE COLLECTION FRANCHISE SYSTEM") REGARDING RECYCLING REQUIREMENTS FOR THE COLLECTION OF SOLID WASTE AND RELATED AMENDMENTS.

SUMMARY AND PURPOSE:

This ordinance will amend portions of Chapter 8.60 and 8.61 of the Pasadena Municipal Code, which are the City's laws concerning (a) the collection of solid waste and (b) the granting of franchises to private companies (called, "franchisees") to allow them to engage in solid waste collection in the City of Pasadena. The primary purpose of the amendment is to encourage the diversion of solid waste away from land fills and to increase the recycling of solid waste by franchisees.

The amendment will make a number of other changes as follows: The title of "Board of Directors" is changed throughout to "City Council" to conform to the formal change in title of the City's legislative body. The amendment also makes some corrections to the tense or case of a words where the incorrect tense or case was used in the original ordinance and to the numbering of a misnumbered section. In addition, some definitions are revised for the sake of consistency between chapters of the code, and department titles are changed to conform to the current organizational structure of the City.

The amendments to Chapter 8.60 include the following: The definition of "self hauler" is clarified to provide a better specification of the types of businesses which are not required to secure a franchise to haul their self generated solid waste. Since the City does not engage in the inspection or certification of solid waste collection vehicles, the amendment eliminates that inspection role. The code is amended to provide greater clarity with respect to the acts which constitute misuse of a regulation container for solid waste collection, including recycling violations. It is also amended to provide more specific notice with respect to violations and to allow greater flexibility in enforcement. In addition to allowing the tools of a compliance order and administrative citation should violations occur, the City can pursue any special costs or remediation caused by a violator for recycling contamination or other violations.

The amendments to Chapter 8.61 include the following: The provisions relating to the term of a non-exclusive franchise for solid waste collection are amended to allow one year terms with a potential for renewal terms which can be granted administratively under certain prescribed circumstances. The provision related to non-assignment of the franchise is amended to clarify that certain name changes and acquisition of accounts do not require approval by the City Council. The provisions related to recycling requirements are modified to provide greater specificity and to set liquidated or contract damages for not meeting the 50% required recycling diversion rates. These damages are specified dollar amounts for tonnage of material which was not recycled. These damage amounts do not apply to the first four months of operation of a franchise by a new franchisee. There are increased reporting requirements including the certification of reports under penalty of perjury.

This is a summary of the ordinance for the purpose of general notice and orientation only and does not itself constitute legal provisions or the law. The full text of the ordinance will become law and interested and affected persons may rely on the full text alone.

REASON WHY LEGISLATION IS NEEDED:

The Pasadena Municipal Code may only be amended by ordinance of the City Council.


PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

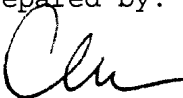
The Department of Public Works, Street Maintenance and Integrated Waste Management Division, will be primarily affected by this proposed ordinance.

FISCAL and SERVICE IMPLICATIONS and ENVIRONMENTAL REVIEW:

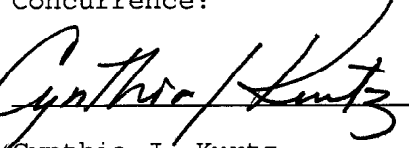
Fiscal and service implications and environmental review are discussed in the concurrently filed agenda report.

Respectfully submitted,


Michele Beal Bagneris
City Attorney

Prepared by: *10/22/02*


Nicholas George Rodriguez
Assistant City Attorney

Concurrence:

Cynthia J. Kurtz
City Manager

Introduced by Councilmember

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTERS 8.60 AND 8.61 OF THE PASADENA MUNICIPAL CODE ("SOLID WASTE" AND "SOLID WASTE COLLECTION FRANCHISE SYSTEM") REGARDING RECYCLING REQUIREMENTS FOR THE COLLECTION OF SOLID WASTE AND RELATED AMENDMENTS.

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

"SUMMARY

This ordinance will amend portions of Chapter 8.60 and 8.61 of the Pasadena Municipal Code, which are the City's laws concerning (a) the collection of solid waste and (b) the granting of franchises to private companies (called, 'franchisees') to allow them to engage in solid waste collection in the City of Pasadena. The primary purpose of the amendment is to encourage the diversion of solid waste away from land fills and to increase the recycling of solid waste by franchisees. The amendment will make a number of other changes as follows: The title of 'Board of Directors' is changed throughout to 'City Council' to conform to the formal change in title of the City's legislative body.

The amendment also makes some corrections to the tense or case of a words where the incorrect tense or case was used in the original ordinance and to the numbering of a misnumbered section. In addition, some definitions are revised for the sake of consistency between chapters of the code, and department titles are changed to conform to

the current organizational structure of the City.

The amendments to Chapter 8.60 include the following: The definition of 'self hauler' is clarified to provide a better specification of the types of businesses which are not required to secure a franchise to haul their self generated solid waste. Since the City does not engage in the inspection or certification of solid waste collection vehicles, the amendment eliminates that inspection role. The code is amended to provide greater clarity with respect to the acts which constitute misuse of a regulation container for solid waste collection, including recycling violations. It is also amended to provide more specific notice with respect to violations and to allow greater flexibility in enforcement. In addition to allowing the tools of a compliance order and administrative citation should violations occur, the City can pursue any special costs or remediation caused by a violator for recycling contamination or other violations.

The amendments to Chapter 8.61 include the following: The provisions relating to the term of a non-exclusive franchise for solid waste collection are amended to allow one year terms with a potential for renewal terms which can be granted administratively under certain prescribed circumstances. The provision related to non-assignment of the franchise is amended to clarify that certain name changes and acquisition of accounts do not require approval by the City Council. The provisions related to recycling requirements are modified to provide greater specificity and to set liquidated or contract damages for not meeting the 50% required recycling diversion rates. These damages are specified dollar amounts for tonnage of material which was not recycled. These damage amounts do not apply to the first four months of operation of a franchise by a new franchisee. There

are increased reporting requirements including the certification reports under penalty of perjury.

This is a summary of the ordinance for the purpose of general notice and orientation only and does not itself constitute legal provisions or the law. The full text of the ordinance will become law and interested and affected persons may rely on the full text alone.

Ordinance No. _____ shall take effect 30 days following its publication by title and summary."

SECTION 2. The words "board of directors" are hereby amended to read "city council" whenever they appear in the headings or in the text of Chapter 8.60 or Chapter 8.61.

SECTION 3. Section 8.60.020 of Chapter 8.60 of the Pasadena Municipal Code is amended by adding a letter sequence to each definition, such that "Bulky items" becomes subparagraph "A," "City" becomes subparagraph "B" and so forth, and by then amending the following definitions, only, and in their proper sequence, to read:

"8.60.020 Definitions.

J. 'Director' means the director of the department of public works and is hereby designated as the administrator and enforcement official under Chapters 1.25 and 1.26 of this code.

N. 'Fabricated metal container' means a city owned fabricated metal container for collecting solid waste which does not exceed a weight of 1,200 pounds when loaded and which is designed to provide for mechanical dumping into city collection vehicles.

V. 'Self-hauler' means any person engaged in the collecting, transporting, disposing, and/or recycling of solid waste generated solely from its own operations, including but not limited to,

landscape architect, arborist, roofer, or gardener, in quantities of less than 5 tons per month, including any person described in Section 8.61.040 as exempt from Chapter 8.61 of this code.

W. 'Solid waste' means refuse, bulky refuse, garbage, commercial garbage, combustible rubbish, noncombustible rubbish, paper, ashes, industrial wastes, rubbish, designated recyclables, vehicles and parts thereof, manure, vegetable or animal wastes, yard waste and liquid wastes enclosed in leak-proof containers, but does not mean excluded material as defined herein in subparagraph M of this section.

X. 'Yard waste' means the component of solid waste consisting of grass clippings, leaves, twigs, branches not wider than 3 inches in diameter and which fit into a regulation container with the lid closed, and material from gardens, but does not mean palm fronds, bamboo, fruits and vegetables, tree stumps, lumber, logs, cactus and ashes."

SECTION 4. Section 8.60.050 of said code is amended to read, in its entirety:

"Section 8.60.050. Solid waste containers.

A. Except as otherwise provided in this section, every responsible person having the care or control of any place or premises in the city where solid waste accumulates or exists, and such solid waste is to be collected by the city, shall cause such solid waste to be placed and kept in containers suitable for collection according to the type of collection service for which that place or premises has been designated under this chapter.

B. For units accumulating large volumes of solid waste,

particularly those units included in the multiple family, estate, or commercial unit categories, the city will accept for collection, solid waste that is accumulated in a fabricated metal container. For units desiring to initiate the use of such a fabricated metal container on a rental basis, city will provide same as a special service at the fees established by resolution of the city council.

C. The city shall provide, at no charge beyond the charge for solid waste collection, regulation containers which the director has determined to be sufficient to provide for the reasonable solid waste storage and collection needs of single-family residential units and multiple family residential units containing 4 or less family residential units within the city of Pasadena. All regulation containers are and shall remain the property of the city.

D. The responsible person shall clean and disinfect all containers in order to maintain the same in a sanitary condition at all times."

SECTION 5. The first, unnumbered paragraph of Section 8.60.120 of said code is amended to read as follows:

"Section 8.60.120. Solid waste reduction program.

As a privilege, and not as a right, each single-family residential unit may be offered the opportunity to participate in a solid waste reduction program which is designed to reduce the amount of mixed solid waste by allowing separate collection of recyclables and yard waste. It is intended that the cost saving to the city be passed along to the participating residential unit as reflected in the cost for services as adopted by the city council. In electing to participate in the solid waste reduction program, every responsible

person agrees to sort and separate or to cause the sorting and separating of their solid waste as follows:"

SECTION 6. Section 8.60.180 of said code is amended to read as follows, in its entirety:

"8.60.180 Collection vehicles must secure solid waste.

All vehicles used in the collection of solid waste shall be completely water-tight, shall be enclosed or equipped with a tight-fitting cover and shall be so loaded at all times as to prevent spillage. Except when solid waste is being loaded or unloaded, the required cover shall be in place to prevent solid waste from spilling therefrom. Each vehicle used for solid waste must be cleaned and maintained in a sanitary condition."

SECTION 7. The first unnumbered paragraph of subsection (C) of Section 8.60.210 of said code is amended to read as follows:

"Section 8.60.210 Solid waste collection and service fees.

C. Other Special Service Fees. Special or additional residential service provided for herein will be made upon request by the responsible person. Other than services which are classified as occasional residential services, collection shall be made pursuant to such request for a period of not less than 6 months, and will be continued thereafter until written request for cancellation of the additional service is made to the director, with payment to be made in advance for a minimum period of 2 months. All fees for special services shall be paid for in advance upon presentation of a bill on a form approved by the director. All special services shall be made only upon an advance request of at least 7 days and upon a total estimate of cost resulting from an inspection by a collector at the

site. The cost of each special service contracted for shall include the combined total of equipment, labor and disposal charges at the rates established. The city council shall establish by resolution the fees for the following special or additional services:"

SECTION 8. Sections 8.60.320 and 8.60.325 of said code are amended to read, in their entirety:

"8.60.320 Misuse of a regulation container.

Any person misusing a regulation container as defined by this section shall be liable for special costs and civil penalties as set forth in Section 8.60.325. The following shall constitute a misuse of a regulation container:

A. Contamination of recyclables or yard waste in a regulation container.

B. Filling a regulation container with more solid waste than will allow the lid to close and in a manner likely to cause spillage.

C. Failing to remove a regulation container from the collection place at the curbside to a location on the premises when it is not readily visible from the street within 24 hours of the scheduled pick up.

8.60.325 Special Costs and Civil penalties for misuse of a container.

For violation of any subsections of Section 8.60.320, the following shall occur:

A. First violation. A courtesy notice shall be issued by the collector, both by tag affixed to the container and by mail to the responsible person. The collector shall not be required to empty the regulation container until the violation is corrected. The responsible person shall be assessed the special collection fee as

established by resolution of the city council for any special pickup. If the misuse of the regulation container has caused the city to incur any remediation or other special costs, the director may issue an administrative citation pursuant to Chapter 1.26 of this code, and a violator shall be subject to procedures, costs and civil penalties set forth therein.

B. Second violation within 6 months of the first violation. A courtesy notice shall be issued by the collector, both by tag affixed to the container and by mail to the responsible person. The responsible person shall be warned that they could lose the privilege of having this regulation container available if there is a further violation. The collector shall not be required to empty the regulation container until the violation is corrected. The responsible person shall be assessed the special collection fee as established by resolution of the city council for any special pickup. If the misuse of the regulation container has caused the city to incur any remediation or other special costs, the director may issue an administrative citation pursuant to Chapter 1.26 of this code, and a violator shall be subject to the procedures, costs, and civil penalties set forth therein.

C. Third violation within 6 months of the second violation. The director may issue a compliance order pursuant to Chapter 1.25 or an administrative citation pursuant to Chapter 1.26 of this code, and a violator shall be subject to the procedures, costs and civil penalties set forth therein."

SECTION 9. Section 8.60.360 of said code is amended to read:

"8.60.360 Abatement of hazardous materials.

Nothing in this chapter is intended to diminish or to preempt the authority of the fire department or any other governmental entity to investigate, clean up or to abate the effects of any hazardous materials under state or federal law, and any such actions and any enforcement actions of the fire department and any other governmental entity shall be in addition to and not in place of any civil penalties and other measures set forth in this chapter."

SECTION 10. Section 8.60.360 entitled "Violations - Penalties" is renumbered to Section 8.60.365 in the table of contents and in the body of the chapter, but without any changes in heading or text.

SECTION 11. Section 8.61.010 of Chapter 8.61 of the Pasadena Municipal Code is amended by amending subsections A, C and F, only, and in their proper sequence, to read:

"8.61.010 Definitions.

A. All definitions in Section 8.60.020 are incorporated into this chapter by reference.

C. 'Director' means the director of the department of public works.

F. 'Solid waste' means refuse, bulky refuse, garbage, commercial garbage, combustible rubbish, noncombustible rubbish, paper, ashes, industrial wastes, rubbish, designated recyclables, vehicles and parts thereof, manure, vegetable or animal wastes, yard waste, and liquid wastes enclosed in leak-proof containers, but does not mean excluded material as defined in subparagraph M of Section 8.60.020."

SECTION 12. Section 8.61.040 of said code is amended to read as follows, in its entirety:

"8.61.040 Exemptions.

The provisions of this chapter shall not apply to:

- A. The city or any person employed by the city, except that the city shall pay the nonexclusive franchise fees specified in Section 8.61.160 for all of its collections from commercial units and multiple family residential units containing 5 or more units; or
- B. Persons or their employees hauling no more than 5 tons per month of refuse which they generate pursuant to a construction project for which that person holds a valid building permit; or
- C. Persons hauling source separated recyclables who operate with one vehicle and without established route and billing system; or
- D. Persons operating a small collection facility and/or recycling center, as defined in subsection A of Section 17.64.300 of this code, or any successor provision, to which customers themselves deliver solid waste in exchange for cash or other consideration; or
- E. Self haulers, as defined in Section 8.60.020(V).
- F. Persons collecting, transporting or disposing of hazardous wastes regulated by federal or state law when engaged in that activity; or
- G. Persons under contract with the city for recycling services provided to single-family residential units and multi-family residential units containing 4 or less family residential units when engaged in that activity."

SECTION 13. Section 8.61.070 of said code is amended to read as follows, in its entirety:

"8.61.070 Application for franchise.

Any person who intends to operate as a franchisee shall first

apply to the city by paying an application-processing fee, in an amount as set forth by a resolution of the City Council, and by filing with the director, upon forms supplied by the city, a verified application containing the following information:

- A. Name and address of applicant.
- B. If the applicant is a partnership, the name and address of each partner shall be set forth in the application. If the applicant is a corporation, the application shall state the names and addresses of the corporation's directors, date and place of incorporation, main offices, major stockholders and associates, and the names and addresses of the parent and subsidiary companies.
- C. Proof of insurance and affirmation of indemnification.
- D. Proof that books and accounts of all revenue and income arising out of its operations are kept in a manner, which conforms with generally accepted accounting principles;
- E. A report of collection activity for the prior calendar year.
- F. A recycling plan setting forth actions to be taken to meet the required recycling diversion rates set forth in Section 8.61.175.
- G. Such further information as the director may reasonably require to evaluate and process an application.

SECTION 14. Subsection 8.61.080(B) of said code is amended to read as follows:

8.61.080 Review of application.

B. At such meeting, or within a reasonable time thereafter, the city council shall consider the application and shall determine whether the application appears to comply with this chapter and, if

so, adopt a resolution as specified in subsection C of this section. Failing to adopt such a resolution shall be deemed to be a denial of the application on the ground that it does not comply with this chapter. An applicant may submit a new application in accordance with this chapter at any time."

SECTION 15. Section 8.61.097 of said code is amended to read as follows, in its entirety:

"8.61.097 Vehicles -- Identification.

Every vehicle operated by franchisee and for collecting, transporting, disposing and/or recycling of solid waste in the city shall bear the following identification: the franchisee's trade name, monogram or insignia, the franchise vehicle number, together with the franchisee's telephone number painted upon both sides of the vehicle. All lettering mentioned in this paragraph shall be not less than 2-1/4 inches in height and not less than 5/6 inches stroke, except the franchise vehicle number which shall be not less than six inches in height. The franchise vehicle number and all other information above must be removed by the vehicle owner within 30 calendar days after the franchise is terminated or the vehicle is sold, transferred or taken out of service."

SECTION 16. Section 8.61.100 of Chapter 8.61 of the Pasadena Municipal Code is amended by amending subsection C, only, to read:

"8.61.100 Indemnification of city.

C. The indemnification described in this section shall be a part of the terms and conditions of all franchise agreements."

SECTION 17. Section 8.61.120 of said code is amended to read as follows, in its entirety:

"8.61.120 Term of any nonexclusive franchise.

The term of any nonexclusive franchise granted under the provisions of this chapter shall be for 1 year or for such longer term as specified by the city council in its discretion, but in no event shall a nonexclusive franchise be granted for a period longer than 20 years. A grant of franchise may provide for specific renewal terms, but the nonexclusive franchise agreement shall state that the franchisee has no vested or contract right in any such renewal term. As to any such renewal term, the nonexclusive franchise agreement shall provide that (a) the city manager shall grant the renewal on a finding that the franchisee is in compliance with the ordinance, the nonexclusive franchise agreement, and all federal, state or local laws and regulations applicable to the operation of the nonexclusive franchise and that the public interest is served by a renewal or (b) may decline to grant any renewal term based on a finding that the franchisee is not in compliance with the ordinance, or with the nonexclusive franchise agreement, or with any federal, state or local law or regulation applicable to the operation of the nonexclusive franchise or that the public interest is not served by a renewal because of a change in circumstances or policy related to solid waste collection or the nonexclusive franchise system. There shall be no other renewals of a nonexclusive franchise, but any person, including any person whose franchise is not renewed, may submit a new application for a new nonexclusive franchise in accordance with this chapter.

SECTION 18. Subsection (E) of Section 8.61.130 of said code is amended to read as follows:

"8.61.130 Termination or suspension of nonexclusive franchise by the city council.

E. The city council may suspend or terminate a nonexclusive franchise upon and with the affirmative vote of five members. The decision to suspend or terminate shall contain findings of fact, a determination of the issues presented and shall be final and conclusive. Any suspension of a nonexclusive franchise shall specify conditions upon which the nonexclusive franchise may be reinstated or terminated. Once it has been terminated, a nonexclusive franchise cannot be reinstated, but the former franchisee may submit a new application in accordance with this chapter."

SECTION 19. Section 8.61.150 of said code is amended to read as follows, in its entirety:

"8.61.150 Nonexclusive franchise transfer or assignment.

Any nonexclusive franchise granted pursuant to this chapter is a privilege to be held in trust by the original franchisee. No such nonexclusive franchise shall be sold, leased, transferred, assigned, or otherwise disposed of, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, without the prior consent of the city council expressed by ordinance. Any such consent of the city council shall be subject to such terms and conditions as it may prescribe. A change of corporate name or a purchase of accounts by a franchisee shall not require city council approval."

SECTION 20. Section 8.61.160(B) of said code is amended by changing the reference which reads "Assembly Bill 393" to read "Assembly Bill 939."

SECTION 21. Sections 8.61.170, 8.61.175 and 8.61.180 of said code are amended to read as follows, in their entirety:

"8.61.170 Requirements for waste reduction and recycling services.

A. Each franchisee shall be required to ensure that recycling services are provided for all of its customers either directly or by arrangement with another franchisee.

B. Materials to be recycled shall be collected at a minimum of once per week.

C. Each franchisee shall, at intervals of no greater than 6 months, provide education and informational literature to its customers and the city describing the recycling services to be provided, materials to be recycled, instructions on how to participate, and providing the franchisee's telephone number.

D. Each franchisee shall, at intervals no greater than 6 months, provide public awareness to its customers including, but not limited to, literature or other information to promote participation and awareness in reducing waste and recycling. If a mixed-waste materials recovery facility is used to recycle these materials, franchisee must inform its customers, in writing, that waste is being recycled. Such information must also describe the quantity in tons and percentage of waste generated and types of material recycled.

E. Each franchisee shall select the type of recycling collection operation. When considering recycling collection methods, the franchisee shall consider factors to assure maximum participation and waste diversion, including but not limited to convenience and cost.

F. Nothing in this chapter precludes a franchisee from assessing reasonable fees for providing recycling services.

8.61.175 Required recycling diversion rates.

A. Each franchisee shall meet a minimum recycling diversion rate of 50% on a monthly basis and on an annual basis.

B. The recycling diversion rate is a percentage amount which is calculated by using the following formula: $a = b/(c-d)$; or, in stated terms, "a" equals a percentage amount calculated by dividing "b" by a number which is, in turn, derived by subtracting "d" from "c." The values for the variables in the formula are calculated or assigned as follows: "a" is the recycling diversion rate, calculated as a percentage amount; "b" is the total amount of solid waste, in tons, recycled in a particular reporting period; "c" is the total amount of solid waste collected, in tons, in a particular reporting period, and "d" is the total amount of solid waste, in tons, which is excepted from the recycling requirement based upon a city approved waste characterization analysis, conducted with any then current methodology of the California Integrated Waste Management Board, or its successor agency. The procedure for submittal, consideration and city approval of a waste characterization analysis shall be approved by the director and established as a standard term and condition of the franchise agreement

C. For the purposes of this section and Section 8.61.180, the term recycling shortfall tonnage means the number of additional tons of solid waste that a franchisee would have had to recycle in order to achieve a recycling diversion rate of 50% for the reporting period.

D. Each franchise agreement shall contain the following liquidated damages provision in substantially the following form: Failure of franchisee to meet the 50% recycling diversion rate for any month will result in damages being sustained by the city. Such damages are, and will continue to be, impracticable and difficult to determine. For each month in which the 50% recycling diversion rate is not met, franchisee shall pay the city an amount of money to be calculated as follows: where the recycling diversion rate in a report is 40% or greater, \$10 per ton of recycling shortfall tonnage; where the recycling diversion rate in a reported month is 30% or greater but less than 40%, \$20 per ton of the recycling shortfall tonnage; where the recycling diversion rate in a reported month is 20% or greater but less than 30%, then \$30 per ton of recycling shortfall tonnage, and where the recycling diversion rate is less than 20% then \$40 per ton of the recycling shortfall tonnage. These liquidated damages shall not apply to a new franchise who has not previously engaged in business in the city in the first 4 months of that franchisee's operation. Execution of this contract shall constitute agreement by the franchisee and city that the stated values are the minimum value of costs and actual damage caused the city by the failure of the franchisee to meet the 50% recycling diversion rate. Such sum is liquidated damages and shall not be construed as a penalty. Liquidated damages shall be paid to the city by franchisee along with the monthly franchise fee payment.

E. Notwithstanding the payment of liquidated damages, any franchisee not meeting the 50% annual recycling diversion rate as measured from the effective date of the franchise agreement shall be

subject to termination or suspension for non-compliance with this section.

8.61.180 Requirements for reporting business activity.

Franchisee shall file with the director a monthly collection report no later than 30 days after the end of the month being reported. The report shall include the following information certified as true and correct under penalty or perjury by a responsible owner or official of the franchisee:

1. Total tonnage of solid waste disposed, identified by source (residential, commercial, and industrial entities);

2. Total tonnage of solid waste recycled, identified by source (residential, commercial, industrial entities, and third party) and individual type of material designated to be recycled as well as recycling shortfall tonnage, if any.

3. Destination and disposal site locations of all solid waste disposed and recycled;

4. Total number of accounts served, identified by source (residential, commercial, and industrial entities);

5. All other information required by the franchise agreement or requested by the director pertaining to the operation of the franchise."

SECTION 22. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 23. This ordinance shall take effect thirty days after its publication.

Signed and approved this _____ day of _____, 2002.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held the ____ day of _____, 2002, by the following vote:

Ayes:

Noes:

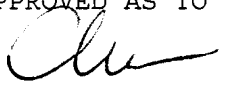
Absent:

Abstain:

Published:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM: 10/29/02



Nicholas George Rodriguez
Assistant City Attorney