



# Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: September 22, 2008

FROM: CITY ATTORNEY

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

TITLE OF PROPOSED ORDINANCE:

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

PURPOSE OF ORDINANCE:

At the regular City Council meeting of February 11, 2008, the Council directed the City Attorney's Office to draft this ordinance with a return date of 180 days given the complexity of the subject matter. The operational changes directed by the City Council are already a part of franchise renewals effective July 1, so there has not been a delay in apprising franchises of the new requirements or in imposing them by Contract at the earliest feasible date. This ordinance will amend portions of Chapter 8.61 of the Pasadena Municipal Code, which are the City's laws concerning the granting of franchise renewals 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 landfills and to reflect changes and developments in the industry.

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10/06/2008  
MEETING OF ~~09/22/2008~~  
AGENDA ITEM NO. ~~9.A.2~~ <sup>9.B.1.</sup>

REASONS WHY LEGISLATION IS NEEDED:

The Pasadena Municipal Code may only be amended by ordinance of the City Council. The primary purposes of the Ordinance amending the Solid Waste Collection Franchise System are as follows: To establish a 75% required recycling diversion rate for construction and demolition debris and a 60% required recycling diversion rate for other solid waste (Section 8.61.175); to improve emission standards and reduce pollutants by requiring proof from haulers of compliance with particulate control measures from solid waste collection vehicles (Section 8.61.099); to limit third party tonnage recycling exceptions to 25% of total tonnage reported (Section 8.61.175(C)); to provide the Director of Public Works with the authority to adopt administrative rules and regulations consistent with this chapter to specify and to clarify requirements and procedures for franchises and to provide the director with the authority to issue administrative citations and compliance orders under applicable provisions of the code (Section 8.61.035); to incorporate state law definitions into this chapter so that it is interpreted consistently with governing state law and to refine and to clarify other definitions in the chapter (Section 8.61.010); to clarify hauling and disposal activities that do not require a franchise agreement (Section 8.61.040); to establish the requirement of a bond or other security to secure payment of franchise fees (Section 8.61.165); to establish standards for bins used by franchisees and for removal of non permitted bins (Section 8.61.098); to clarify standards for the administrative renewal of a franchise (Section 8.61.120) and other minor corrections and updates.

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.

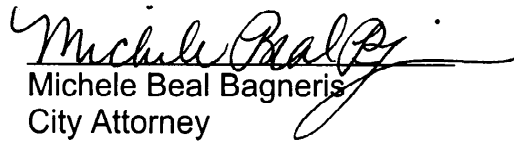
CALIFORNIA ENVIRONMENTAL QUALITY ACT:

Under the State Guidelines for the implementation of the California Environmental Quality Act (CEQA), the non-exclusive franchise system ordinance, and this modification thereto, is categorically exempt. A Notice of Exemption was filed with the Los Angeles County Clerk in conjunction with the passage of the non-exclusive franchise system ordinance.

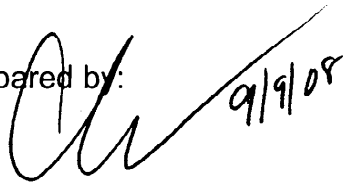
FISCAL IMPACT:

Approving the preparation of an amendment to Chapter 8.61 of the Pasadena Municipal Code will add defined guidelines and franchisees will have a better understanding of the franchise ordinance requirements. As a result there will be limited fiscal impact due to enforcement of the proposed changes.

Respectfully Submitted,

  
Michele Beal Bagneris  
City Attorney

Prepared by:

 9/9/08

Nicholas George Rodriguez  
Assistant City Attorney

Concurrence:

  
Bernard K. Melekian  
City Manager

Introduced by: \_\_\_\_\_

ORDINANCE NO.: \_\_\_\_\_

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 8.61 OF THE PASADENA MUNICIPAL CODE ("SOLID WASTE COLLECTION FRANCHISE SYSTEM") REGARDING FRANCHISE 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 cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

"Summary"

Ordinance No. \_\_\_\_\_. The primary purposes of the Ordinance amending the Solid Waste Collection Franchise System are as follows: To establish a 75% required recycling diversion rate for construction and demolition debris and a 60% required recycling diversion rate for other solid waste (Section 8.61.175); to improve emission standards and reduce pollutants by requiring proof from haulers of compliance with particulate control measures from solid waste collection vehicles (Section 8.61.099); to limit third party tonnage recycling exceptions to 25% of total tonnage reported (Section 8.61.175(C)); to provide the Director of Public Works with the authority to adopt administrative rules and regulations consistent with this chapter to specify and to clarify requirements and procedures for franchises and to provide the director with the authority to issue administrative citations and compliance orders under applicable provisions of the code (Section 8.61.035); to incorporate state law definitions into this chapter so that it is interpreted consistently with governing state law and to refine and to clarify other definitions in the chapter (Section 8.61.010); to clarify hauling and disposal activities that do not require a franchise agreement (Section 8.61.040); to establish the requirement of a bond or other security to secure payment of franchise fees (Section 8.61.165); to establish standards for bins used by franchisees and for removal of non permitted bins (Section 8.61.098); to clarify standards for the administrative renewal of a franchise (Section 8.61.120), and other minor corrections and updates.

Ordinance No. \_\_\_\_\_ shall take effect 30 days from its publication."

SECTION 2. **Section 8.61.010 is amended to read as follows:**

## **8.61.010. Definitions.**

For the purposes of this chapter, certain terms used herein are defined as follows:

- A. The definitions found in the following referenced laws and regulations are incorporated into this chapter by reference, in the following order of precedence: California Public Resources Code, Section 40100, et seq.; Title 14 of the California Code of Regulations, Section 17381, et seq., any successor statutes or regulations; section 8.60.020 of this code (Solid Waste), and section 8.62.020 of this code (Waste Management Plan for Certain Construction and Demolition Projects Within the City of Pasadena).
- B. "Administrator" means the Waste Management Division Administrator of the City of Pasadena.
- C. "Agreement" means a non-exclusive franchise agreement between the City and a franchisee.
- D. "Bins" means one or more container, roll-off box, debris box, dumpster or other free standing waste container provided by a franchisee for the deposit and collection of solid waste and/or recycling.
- E. "Bulky goods" means large and small household appliances, furniture, carpets, mattresses, white goods, oversized yard waste such as tree trunks and large branches, if no larger than eighteen inches (18") in diameter and four feet (4') in length, and similar large items discarded by commercial customers.
- F. "City" means the City of Pasadena.
- G. "Construction and demolition debris shall have the definition set forth in section 8.62.020(D) of this code.
- H. "Director" means the director of the department of public works.
- I. "Franchise" means a non-exclusive franchise issued by the City to a solid waste hauler for the purpose of collecting solid waste generated upon multiple-family commercial or industrial premises, or construction and demolition debris generated anywhere within the City.
- J. "Gross receipts" means any and all compensation received by the franchisee in connection with collecting, transporting, disposing and/or recycling of solid waste kept, accumulated, or produced in the City plus any and all such compensation received by the franchisee or franchisee's subcontractors in connection with collecting, transporting, disposing, and/or recycling of solid waste produced, kept, or accumulated in the City, excepting compensation received from sale of material recovered through recycling and excepting state, county or city sales tax required by law to be included in or added to the price and collected from the consumer.
- K. "Franchise logo" means the identifying information to be painted on bins and vehicles by the franchisee, including size, color and content, conforming to the standards in the administrative rules and regulations adopted by the director pursuant to this chapter and approved in the franchise agreement.
- L. "Franchisee" means any person granted a franchise in accordance with the provisions of this chapter.

M. "Materials recovery facility or "MRF" means any facility for which the separation of commingled recyclable materials into various components is conducted either manually or by mechanized processes, or which extracts recyclable material from refuse for the purpose of returning that material to the economic main stream.

N. "Recycling" means participation in any part of the process of collecting, sorting, cleansing, treating and reconstituting materials that otherwise would be discarded, and returning them to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

O. "Other solid waste" shall have the definition as set forth in California Public Resources Code Section 40191, and any successor provision except that it shall not include construction and demolition debris.

P. "Responsible operating officer" means the individual responsible for the compliance of the franchise with this chapter and the franchise, and who is authorized to bind the franchisee in all matters related to the franchise.

Q. "Self-hauler" means, for the purposes of this chapter, any person engaged in the collecting, transporting, disposing, and/or recycling of solid waste generated solely from its own operations and using its own equipment, including, but not limited to, document shredding services, landscape architect, arborist, roofer, or gardener but excluding solid waste generated from construction and demolition operations.

R. "Solid waste" shall have the definition as set forth in California Public Resources Code Section 40191, and any successor provision.

S. "Third party diversion tonnage" means recycling or reuse programs being conducted as businesses in the City of Pasadena by parties other than a franchisee and documented in reports and procedures approved by the director. This may include recyclables collected by a recycler, community group, recyclables delivered to a recycling center by employees or other persons not associated with a solid waste hauler.

T. "Transformation" means incineration, distillation, gasification or biological conversion other than composting. Transformation does not include composting or biomass conversion.

**SECTION 3. Section 8.61.030 is amended to read as follows:**

**8.61.030. Activities Which Are Unlawful Unless Authorized.**

Except as specifically exempted in Section 8.61.040, it is unlawful for any person to engage in the business of collecting, transporting, disposing, and/or recycling of solid waste kept, accumulated or produced in the city unless a franchise therefore has been granted pursuant to the provisions of this chapter, and unless a written franchise agreement therefore has been signed between such person and the city, and unless such nonexclusive franchise and agreement is in full force and effect.

**SECTION 4. A new section 8.61.035 is added to read as follows:**

### **8.61.035. Power and Duties of Director.**

- A. The director shall have the power and duty, and is directed, to enforce each and all of the provisions of this chapter.
- B. The director may adopt administrative rules and regulations, approved by the city attorney as to form and legality, not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the fees herein imposed, clarifying any of the administrative requirements of this chapter, and establishing frequency and protocol of city regulatory inspections and franchise reporting. A proposed rule or regulation shall be sent by first class mail to the address of record of each franchisee, providing notice that it is to be adopted no earlier than twenty one (21) calendar days from the date of mailing and indicating the manner in which written comments may be provided to the director. A copy of the final, adopted rule or regulation shall then be sent by first class mail to the address of record of each franchisee, stating the effective date of the rule or regulation, which shall be no earlier than ten (10) calendar days from the date of mailing. A copy of all adopted administrative rules and regulations shall be on file in the director's office.
- C. The director shall act as the enforcement official who is designated to issue a compliance order or an administrative citation to enforce this chapter pursuant to chapter 1.25 or 1.26, respectively, of this code.

### **SECTION 5. Section 8.61.040 is amended to read as follows:**

#### **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 solid waste , as an incidental part of their own work under a valid building or demolition permit, but not as a separately contracted disposal or hauling service, and that is transported by a fixed bed vehicle, and not by bins, and disposed of at an MRF or at a diversion facility and not at a landfill; 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 paragraph 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 of section 8.61.010 of this chapter.
- F. Persons who operate without established route and without bins providing clean out services of personal property from residential structures, not involving construction or demolition.

- G. Persons hauling only inert debris, as defined in 14 California Code of Regulations, Section 17381.
- H. Persons hauling solid waste generated by persons or entities if imposition of a franchise fee on those persons or entities would be in violation of a Federal or California Statute, the Constitution of the United States or the Constitution of the State of California as to solid waste generated by those persons or entities, only.
- I. Persons collecting, transporting or disposing of hazardous wastes regulated by federal or state law when engaged in that activity; or
- J. 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 6. Section 8.61.070 is amended to read as follows:**

**8.61.070. Application For Franchise.**

Any person who intends to operate as a franchisee, or to renew a franchise agreement after the term set by the city council expires in the ordinary course, 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 of the type and amount required by the director 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 on a form to be provided by director;
- G. The name and title of the responsible operating officer.
- H. Proposed franchise logo.
- I. Such further information as the director may reasonably require to evaluate and process an application.

**SECTION 7. Section 8.61.080 is amended to read as follows:**



### **8.61.080. Review Of Application.**

A. An application for nonexclusive franchise or for renewal under the provisions of this chapter, containing all of the information described in section 8.61.070, which is both complete and in a form acceptable to the director, by a person who is not in material default of the provisions of any prior franchise agreement and who meets the minimum standards imposed by this chapter and any related administrative rules and regulations for operating in the city, as the director shall determine, shall be presented to the city council at a regularly scheduled meeting.

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.

C. As to an application which appears to comply with this chapter, and before granting any franchise, the city council shall adopt a resolution declaring its intention to consider the granting of a nonexclusive franchise, stating the name of the proposed franchisee, the character of the proposed franchise, and a brief and general summary of the terms and conditions upon which it is proposed to be granted. Such resolution shall set forth the day, hour, and place when and where any person having an interest in or objecting to the granting of such franchise may appear before the city council and be heard.

D. The hearing on the granting of a nonexclusive franchise shall be held not earlier than the fourteenth day following the date of adoption of the resolution giving notice of the application. The city clerk shall cause the resolution to be published at least once in a newspaper of general circulation in the city not less than ten days prior to the date set for the hearing.

E. At the hearing on an application for a nonexclusive franchise, the city council shall give all persons desiring to be heard a reasonable opportunity to present evidence or otherwise be heard in favor of or in opposition to the granting of a nonexclusive franchise to the applicant. At such hearing, the city council may demand from the applicant such additional information as the city council may deem relevant and necessary. The hearing may be continued or adjourned to a stated time and place without the giving of further notice.

### **SECTION 8. Section 8.61.090 is amended to read as follows:**

#### **8.61.090. Granting Of A Nonexclusive Franchise.**

A. After hearing all persons desiring to be heard on the application for a nonexclusive franchise, and within a reasonable time thereafter, the city council shall render its decision on the application. The nonexclusive franchise shall be granted or denied based upon compliance with this chapter or granted conditionally upon satisfaction of the requirements of this chapter. Any grant of a nonexclusive franchise by the city council may be subject to such terms,

conditions, rules, regulations, restrictions and limitations as the city council deems necessary to protect the public health, safety or welfare.

B. No nonexclusive franchise shall be granted except by ordinance and no nonexclusive franchise shall become effective unless and until a written franchise agreement has been signed between such person and the city and unless and until all other requirements set forth in this chapter have been satisfied, including but not limited to evidence of compliance with the insurance and indemnification requirements of this chapter in a form acceptable to the director.

C. Should a nonexclusive franchise not be granted to an applicant, the city shall issue a notice to the applicant to terminate those business activities in the city which are regulated by this chapter.

**SECTION 9. Sections 8.61.095 and 8.61.096 are repealed.**

**SECTION 10. Section 8.61.097 is amended to read as follows:**

**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 franchise logo. The franchise logo must be removed by the vehicle owner within 15 calendar days after the franchise is terminated or the vehicle is sold, transferred or taken out of service.

**SECTION 11. A new Section 8.61.098 is added to read as follows:**

**8.61.098. Bins.**

A. Standards and Identification. Every bin shall be manufactured specifically for its intended use and shall comply with the provisions of the administrative rules and regulations adopted by the director pursuant to section 8.61.035(B) of this chapter as to specifications, characteristics, maintenance, cleanliness and permanent labeling.

B. Bins of franchisees. Upon determination by the director that a bin of a franchisee has been installed, used or maintained in violation of the provisions of this chapter, including, but without limitation failure to observe any term or condition of the franchise, an order to comply pursuant to Chapter 1.25 or administrative citation pursuant to Chapter 1.26 may be issued to the franchisee.

C. Summary removal of bins. In the event the director determines that the condition or placement of a bin constitutes a dangerous condition or obstruction, or that a bin has been placed on a public sidewalk or parkway by a person without a valid franchise, the director may cause the bin to be removed summarily and without a hearing. An administrative citation shall be served upon the person who owns the bin within 24 hours of removal in the manner set

forth in Section 1.26.050, and if the owner cannot be identified, the bin shall be treated as abandoned property.

**SECTION 12. A new Section 8.61.099 is added to read as follows:**

**8.61.099. Emission Standards.**

Every franchisee shall operate its vehicles under a franchise in conformance with the rules and regulations adopted by the California Air Resources Board, specifically 13 California Code of Regulations, Sections 2020, 2021, 2021.1 and 2021.2 et seq., any successor provisions, any other applicable city, county, state and federal laws, and other guidelines that the director may adopt by administrative rules and regulations consistent with this section. Routine inspections by the California Highway Patrol shall be required annually of all vehicles, and certificates for said inspection shall be filed with the director in conformance with the rules and regulations adopted by the California Code of Regulations Title 13, Chapter 6.5, Section 1202.1 and 1202.2 and any successor provisions.

**SECTION 13. Section 8.61.110 is amended to read as follows:**

**8.61.110. Liability Insurance.**

The city council shall establish by resolution the minimum levels and standards of liability insurance and claims reserve which must be maintained in order to apply for, to receive and to operate a nonexclusive franchise under this chapter. The city council shall also establish by resolution the manner in which compliance with the minimum standards is demonstrated. The failure to maintain the minimum levels and standards of liability insurance for any period of time is a violation of this chapter and shall be sufficient grounds for temporary suspension or termination of a nonexclusive franchise.

**SECTION 14. Section 8.61.120 is amended to read as follows:**

**8.61.120. Term Of Any Nonexclusive Franchise.**

The term of any nonexclusive franchise granted under the provisions of this chapter shall be for the duration 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 city manager: (a) 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. Such findings of non-compliance include, but are not limited to failing to meet recycling requirements, failing to meet vehicle emissions standards, failing to maintain proper levels of insurance, or failing to make timely reports or payments, or (c) may grant any renewal term conditionally based upon conditions designed to secure compliance with this ordinance or (d) may decline to grant any renewal term where 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 to the extent that the city council has indicated applications may be made.

**SECTION 15. Section 8.61.130 is amended to read as follows:**

**8.61.130. Termination Of Nonexclusive Franchise By The City Council.**

A. The city council shall have the right to terminate any nonexclusive franchise pursuant to this section.

B. A notice of intent to terminate a nonexclusive franchise shall be personally delivered or mailed, at the discretion of the director, to the franchisee at the franchisee's address of record, shall state grounds for termination and shall give the franchisee notice of the time, date and place of a hearing before the city council thereon, which shall be convened no more than 60 days after the date of notice, subject to continuance with the consent of the parties. The notice shall advise the franchisee that it may be represented by counsel and may contain any other information deemed proper.

C. The hearing shall be conducted and closed, and decision rendered thereon within 60 days after the date of the hearing.

D. The city council shall have the right to terminate or suspend any nonexclusive franchise agreement granted pursuant to this chapter if the city council finds, after a public hearing, that:

1. The franchisee has failed to comply with, or to do anything required of the franchisee by this chapter, or that franchisee has violated any provision of the ordinance granting the nonexclusive franchise, including, but without limitation, failure to timely pay franchise fees, failure to timely submit tonnage reports, or failure or inability to meet a minimum 75% for construction and demolition debris or 60% for solid waste or has violated any provision of the nonexclusive franchise agreement or any federal, state or local law or regulation applicable to the operation of the nonexclusive franchise;

2. If any provision of this chapter or of the franchise agreement is repealed or becomes or is declared to be invalid, and the city council expressly finds that such provision constitutes a material consideration to the grant or continuation of such nonexclusive franchise.

E. The city council may suspend or terminate a nonexclusive franchise. 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.

**SECTION 16. Section 8.61.140 is amended to read as follows:**

**8.61.140. Temporary Suspension By Director - When.**

The director may temporarily suspend any nonexclusive franchise without a hearing, whenever the continued operation by the franchisee would constitute a danger to public health, safety, welfare or public morals, including, without limitation, where there is a failure to maintain the minimum levels and standards of liability insurance or claims reserve or failure to keep in full force and effect any applicable licenses or permits required by federal, state or local law or regulation or failure or inability to comply with any material term of the franchise agreement or any law, rule or regulation governing the operation of the franchise. The notice of temporary suspension may be personally delivered to the party named and to the address given on the application pursuant to which such nonexclusive franchise was issued, or, mailed by registered or certified mail to the party named at the address given on the application pursuant to which such franchise was issued. The temporary suspension is effective upon the earlier of either receipt of the expiration of 5 days from the date of mailing. The notice of temporary suspension shall include a notice of the date and time for termination hearing and all other information required by subsection B of section 8.61.130. The temporary suspension shall remain effective until the decision on suspension or termination by the city council is made pursuant to section 8.61.130 or unless the suspension is lifted by written notice of the director.

**SECTION 17. Section 8.61.160 is amended to read as follows:**

**8.61.160. Nonexclusive Franchise Fees.**

A. Each franchisee granted a franchise pursuant to this chapter shall pay a franchise fee to the city during the term of such franchise which shall be assessed from the date on which the ordinance granting the franchise becomes effective. The franchise fee shall be in the amounts and in the manner set forth in a resolution adopted by the city council and may be modified by the city council at any time during the term of any franchise.

B. Pursuant to Division 30, Part 3, Chapter 8 of the Public Resources Code Section 41900 et seq., or any successor provision, the resolution shall prescribe a specific percentage of the fee for preparing, adopting and implementing an integrated waste management plan consistent with City Resolution No. 6738 adopting the city's Source Reduction and Recycling Element required by Assembly Bill 939. That portion of the fee shall be separately accounted for and

shall be used only for the costs stated in Public Revenues Code, Section 41901, or any successor provision.

C. The first payment of franchise fees shall be due and payable by franchisee on a date specified in the franchise agreement, but not later than sixty days after the end of the first calendar month in which the ordinance granting the franchise becomes effective, and thereafter payments shall be due and payable every month thereafter. Each payment shall be calculated in accordance with the provisions of the resolution adopted by the city council pursuant to subsection A of this section.

D. On the first day of every month, the franchisee shall pay the required franchise fee to the city's director of public works. Each payment shall be accompanied by a form, provided by the director, verified by the franchisee or a duly authorized representative of the franchisee, showing in such form and detail as the director of public works may prescribe, the calculation of the franchise fee payable by the franchisee and such other information as the director of public works may require as material to a determination of the amount due.

E. No statement filed under this section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the city from collecting by appropriate action the sum that is actually due and payable.

F. The payment to the city by the franchisee pursuant to this chapter shall be in addition to any license fee or business tax prescribed by the city for the same period.

**SECTION 18. A new Section 8.61.165 is added to read as follows:**

**Section 8.61.165. Bond Or Other Security.**

Franchisee shall maintain a bond or other security with the city, in a form acceptable to the director, in an amount required to secure payment of franchise fees projected for one month of the franchise, or the amount of ten thousand dollars, whichever amount is greater. The bond or security must be submitted within seven days from the date the franchise is granted and must be replenished within ten (10) days from any draw by the city. The city may draw upon the bond or security after five (5) days written notice to franchisee of delinquency or non-payment. The remaining bond or security will be returned to franchisee by the city on termination of the franchise.

**SECTION 19. Section 8.61.170 is amended to read as follows:**

**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. This information shall also promote awareness of proper disposal of bulky items, abandoned items, hazardous waste, medical waste and electronic waste. 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. Franchisee shall use its best commercial efforts to provide each customer with on call, curbside pick up of bulky items at intervals of twice per calendar year as a part of its basic commercial solid waste service.

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

**SECTION 20. Section 8.61.175 is amended to read as follows:**

**8.61.175. Required Recycling Diversion Rates.**

A. Each franchisee shall meet a minimum recycling diversion rate of 75% on a monthly basis and on an annual basis for construction and demolition debris.

B. Each franchisee shall meet a minimum recycling diversion rate of 60% on a monthly basis and on an annual basis for other solid waste.

C. 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 achieved for the period calculated as a percentage amount; "b" is the total amount of construction and demolition debris or other 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 construction and demolition debris or other solid waste, in tons, which is third party diversion tonnage, and which may not exceed 25% per month of total tonnage, plus any tonnage 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.

D. For the purposes of this section and Section 8.61.180, the term recycling shortfall tonnage means the number of additional tons of construction and demolition debris or other solid waste that a franchisee would have had to recycle in order to achieve a recycling diversion rate of 75% for construction and demolition debris and 60% for other solid waste for the reporting period.

E. Continued failure or inability to meet the diversion rates established by this section shall be considered a material breach of the franchise and of the franchise agreement and, notwithstanding the payment of liquidated damages, shall be cause for suspension, termination and non-renewal of the franchise in addition to any other remedies provided or specified by this chapter.

F. Each franchise agreement shall provide for liquidated damages, essentially, as follows: Failure of franchisee to meet the recycling diversion rates set forth in paragraphs A and B of this section, 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 either 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 reported month is 40% or greater but less than the applicable, required recycling diversion percentage, \$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. 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 recycling diversion rates set forth in paragraphs A and B of this section. 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.

G. Notwithstanding the payment of liquidated damages, any franchisee not meeting the annual recycling diversion rates as measured from the effective date of the franchise agreement shall be subject to termination or suspension for non-compliance with this section.

**SECTION 21. Section 8.61.190 is amended to read as follows:**

**8.61.190. City Inspection Authority.**

A. Books and Accounts. The franchisee shall maintain accurate and complete books and accounts of all revenues and income arising out of its operations under the franchise granted pursuant to this chapter and in a manner which conforms with generally accepted accounting principles. Franchisee's books, accounts and records, arising out of or related to its operations under the franchise granted pursuant to this chapter, shall at all times be open to inspection, examination and audit by authorized officers, employees and agents of the city.



B. Regulatory Inspection. Franchisee shall provide written technical or monitoring program reports which verify compliance with the regulatory aspects of this chapter as may be specified and requested by the director. Such reports shall be timely submitted to the director under penalty of perjury by the responsible operating officer. Franchisee agrees to allow reasonable on site inspection of vehicles and facilities, in accord with any rules and regulations issued by the director, to evaluate compliance with this chapter.

**SECTION 22. Section 8.61.210 is amended to read as follows:**

**8.61.210. Penalties And Administrative Proceedings.**

A. Misdemeanors. Any person who violates any provision of this chapter and is convicted of a misdemeanor shall be punished by a fine of not more than \$1,000.00 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment.

B. Infractions. Any person who violates any provision of this chapter and is convicted of an infraction shall be punished by a fine of not more than \$500.00. Each person convicted may be deemed guilty of a separate offense for every day during any portion of which any violation is committed or permitted.

C. In addition to the penalty provisions of subsections A and B of this section, violations of any administrative or regulatory provision of this chapter may be subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of this code, including, but without limitation, civil penalties, late payment penalties, administrative fees, general fee schedule penalties and other related charges.

SECTION 23. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published in full text.

SECTION 24. This ordinance shall take effect upon its publication.

Signed and approved this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
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 \_\_\_\_\_, 2008, by the following vote:

AYES:

NOES:

ABSENT:


ABSTAIN:

PUBLISHED:

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Mark Jomsky, CMC  
City Clerk

APPROVED AS TO FORM:



9/23/08

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Nicholas George Rodriguez  
Assistant City Attorney