

Chapter 8.61 SOLID WASTE COLLECTION FRANCHISE SYSTEM**Sections:**

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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 22 of the California Code of Regulations, Section 40191, 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 18 inches in diameter and 4 feet 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.

(Ord. 6916 §§ 2 (part), 11, 2002; Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 2, 11-21-2008)

8.61.020 Solid waste collection franchises—Purpose and declarations.

A.

It is hereby declared and determined that the business of collecting, transporting, disposing and/or recycling of solid waste affects the health, safety and public welfare and the quality of life of the residents of the city. Therefore, it is one purpose of this chapter to regulate this business in order to ensure its orderly operation, and to minimize the adverse effects it may have on the local environment.

B.

It is also the intent of this chapter, aside and apart from the purpose of regulation, to generate revenue for municipal purposes including but not limited to the maintenance of the public streets and roadways which are impacted by the heavily laden vehicles used in this business.

C.

It is hereby recognized that the city is required to prepare, adopt and implement an integrated waste management plan and that the city may impose fees to fund the cost of this effort. Therefore, it is the purpose of this chapter to assist in implementation of an integrated waste management plan and to provide funding toward the cost of that plan.

D.

The city, by the adoption of Article XI of the City Charter, having elected to take advantage of the provisions of the Constitution of the State of California giving cities home rule as to municipal affairs, and the granting of nonexclusive franchises of the character hereinafter referred to being within the classification "municipal affairs," hereby declares that the provisions of this chapter, together with the provisions of said charter, shall constitute the exclusive procedure applicable to the grant of franchises for conducting the business of collecting, transporting, disposing, and/or recycling solid waste.

(Ord. 6510 § 2 (part), 1992)

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.

(Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 2, 11-21-2008)

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 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 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.

(Ord. No. 7154, § 4, 11-24-2008)

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.

(Ord. 6916 § 12, 2002: Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 5, 11-24-2008)

8.61.050 Nonexclusive franchise—City council authority to grant.

The city council may and is hereby empowered to grant by ordinance to any person, whether operating under an existing franchise or not, a nonexclusive franchise to engage in the business of collecting, transporting, disposing, and/or recycling of solid waste, kept, accumulated or produced in the city.

(Ord. 6916 § 2 (part), 2002; Ord. 6510 § 2 (part), 1992)

8.61.055 No new applications for a nonexclusive franchise—Renewal of existing franchises.

As of August 6, 2007, and until such future date as the city council may determine, the city shall neither accept nor process new applications for franchises, and the city council shall grant no new franchises. Any franchisee with the city as of August 6, 2007 may apply for the grant of franchise renewal by following the procedures set forth in Section 8.61.070, on a renewal form to be provided by the director. For the purposes of this section, "a franchisee with the city as of August 6, 2007," shall mean the following: Any person approved by the city council for a franchise on or prior to August 6, 2007, but it shall not include the following: franchises which have lapsed prior to August 6, 2007; franchises which have been terminated or not renewed for noncompliance with any provision of this chapter at any time, or applicants for new franchises which were pending as of August 6, 2007, but had not been granted by city council on or prior to that date. Franchise renewals shall be subject to the terms, conditions, rules, regulations, restrictions and limitations of Chapter 8.61 of this code, and such other terms and conditions as city council deems necessary to protect the public health, safety or welfare.

(Ord. 7110 § 1, 2007)

8.61.060 Nonexclusive franchise—Terms and conditions.

A.

All franchises granted to persons pursuant to this chapter shall be nonexclusive. No provisions of this chapter shall be deemed to require or to allow restricting the number of franchises to one or to any particular number.

B.

All nonexclusive franchises shall be subject to the terms and conditions specified in the City Charter, in this chapter, in the ordinances and resolutions granting the franchise, in the franchise agreement and in all other applicable federal, state and local laws and regulations.

C.

In granting any nonexclusive franchise, the city council may prescribe such other and additional terms and conditions, not in conflict with the City Charter or this chapter, as in the judgment of the city council are in the public interest.

(Ord. 6916 § 2 (part), 2002; Ord. 6510 § 2 (part), 1992)

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.

(Ord. 6916 § 13, 2002; Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 6, 11-24-2008)

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.

(Ord. 6510 § 12, 2002, Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 7, 11-24-2008)

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.

(Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 8, 11-24-2008)

8.61.095 Reserved.

Editor's note—

Ord. No. 7154, § 9, adopted Nov. 24, 2008, repealed § 8.61.095 in its entirety. Former § 8.61.095 pertained to franchise vehicle number and sticker—issuance and derived from Ord. No. 6517, § 1, adopted in 1993.

8.61.096 Reserved.

Editor's note—

Ord. No. 7154, § 9, adopted Nov. 24, 2008, repealed § 8.61.096 in its entirety. Former § 8.61.096 pertained to vehicle sticker—display and derived from Ord. No. 6517, § 1, adopted in 1993.

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.

(Ord. 6916 § 15, 2002; Ord. 6517 § 1 (part), 1993)

(Ord. No. 7154, § 10, 11-24-2008)

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 Subsection 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.

(Ord. No. 7154, § 11, 11-24-2008)

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.

(Ord. No. 7154, § 12, 11-24-2008)

8.61.100 Indemnification of city.

A.

Franchisees shall indemnify and hold the city harmless from and against any and all loss, damages, liability, claims, suits, costs and expenses, fines, charges or penalties whatsoever, including reasonable attorney's fees, regardless of the merit or outcome of any such claim or suit, arising from or in any manner related to the services provided or business conducted under this chapter or under any nonexclusive franchise granted pursuant to this chapter.

B.

Franchisees shall indemnify the city, defend with counsel approved by the city, protect and hold harmless the city, its officers, employees, agents, assigns, and any successor or successors to the city's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines and charges, penalties and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the city or its officers, employees, agents or the franchisee arising from or attributable to any repair, remediation, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, or closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous waste at any place where the franchisee stores or disposes of solid or hazardous waste. The foregoing indemnity is intended to operate as an agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code Section 9607, and California Health and Safety Code Section 25364, and any successor provisions, to insure, protect, hold harmless, and indemnify the city from liability.

C.

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

(Ord. 6916 § 16, 2002; Ord. 6510 § 2 (part), 1992)

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.

(Ord. 6916 § 2 (part), 2002; Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 13, 11-24-2008)

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.

(Ord. 6916 § 17, 2002; Ord. 6610 § 2 (part), 1999)

(Ord. No. 7159, § 14, 11-24-2008)

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, continued failure to timely submit tonnage reports, or continued failure or inability to meet a minimum 75% for construction and demolition debris or 65% 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.

(Ord. 6916 §§ 2 (part), 18, 2002; Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 15, 11-24-2008)

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 continued 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.

(Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 16, 11-24-2008)

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.

(Ord. 6916 § 19, 2002; Ord. 6510 § 2 (part), 1992)

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.

(Ord. 6916 § 20, 2002; Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 17, 11-24-2008)

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 1 month of the franchise, or the amount of \$10,000.00, whichever amount is greater. The bond or security must be submitted within 7 days from the date the franchise is granted and must be replenished within ten days from any draw by the city. The city may draw upon the bond or security after 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.

(Ord. No. 7154, § 18, 11-24-2008)

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.

(Ord. 6916 § 21 (part), 2002; Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 19, 11-24-2008)

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, \$10.00 per ton of recycling shortfall tonnage; where the recycling diversion rate in a reported month is 30% or greater but less than 40%, \$20.00 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 \$30.00 per ton of recycling shortfall tonnage, and where the recycling diversion rate is less than 20% then \$40.00 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.

(Ord. 6916 § 21 (part), 2002)

(Ord. No. 7154, § 20, 11-24-2008)

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.

(Ord. 6916 § 21 (part), 2002)

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.

(Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 21, 11-24-2008)

8.61.200 Rights reserved to city.

In addition to all other rights reserved to the city under this chapter, the following shall apply:

A.

There is hereby reserved to the city every right and power, and the exercise thereof, which is reserved or authorized by any provision of any lawful ordinance or resolution of the city, whether enacted before or after the effective date of the ordinance codified in this chapter.

B.

Neither the granting of any nonexclusive franchise nor any provision of any nonexclusive franchise shall constitute a waiver of or a bar to the exercise of any governmental right or power of the city.

C.

There is hereby expressly reserved to the city the power and authority to amend any section of this chapter so as to require additional or grater standards on the part of the franchisee and the

power and authority to increase the nonexclusive franchise fees to be paid by the franchisee pursuant to Section 8.61.160 at any time during the term of the nonexclusive franchise.

(Ord. 6510 § 2 (part), 1992)

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.

(Ord. 6510 § 2 (part), 1992)

(Ord. No. 7154, § 22, 11-24-2008)