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(O-97-3)
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ORDINANCE NUMBER O-18353 (NEW SERIES)

ADOPTED ON OCTOBER 21, 1996

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 1, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 66.0101 THROUGH 66.0106; BY REPEALING SECTIONS 66.0107, 66.0108, 66.0109, 66.0110, 66.0111, 66.0112, 66.0113, 66.0114, 66.0115, 66.0116, 66.0118, 66.0119, AND 66.0121; BY AMENDING AND RENUMBERING SECTIONS 66.0117 TO 66.0124 AND 66.0120 TO 66.0125; BY RENUMBERING SECTIONS 66.0122 TO 66.0126, 66.0123 TO 66.0127, 66.0124 TO 66.0128, 66.0125 TO 66.0129, 66.0126 TO 66.0130, AND 66.0127 TO 66.0131; AND BY ADDING NEW SECTIONS 66.0107 THROUGH 66.0123 AND 66.0132, ALL RELATING TO SOLID WASTE FRANCHISE.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VI, Article 1, of the San Diego Municipal Code be and the same is hereby amended by amending sections 66.0101, 66.0102, 66.0103, 66.0104, 66.0105 and 66.0106, to read as follows:

SEC. 66.0101 Purpose and Intent

It is the purpose and intent of this division to provide detailed and comprehensive rules for the collection, transportation, processing and disposal of solid waste in The City of San Diego.

Consistent with the above purpose, it is intended herein to provide rules supplementing the provisions of Section 66.0127 of the San Diego Municipal Code, or subsequent amendments, and create an efficient method of granting a franchise for regulating the collection, transportation, processing and disposal of solid waste within The City of San Diego.

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It is not the intent of this division to franchise solid waste facilities which are separately permitted by appropriate regulatory agencies.

If any portion of this division is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this division.

SEC. 66.0102 Definitions

For the purposes of this division, the following definitions shall apply:

(a) "AB 939" shall mean the California Integrated Waste Management Act of 1989 (California Public Resources Code § 40000 et seq.), as it may be amended from time to time.

(b) "Affiliate" shall mean all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to franchisee by virtue of direct or indirect ownership interest or common management. An affiliate shall include a business in which franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in franchisee, and/or a business which is also owned, controlled, or managed by any business or individual which has a direct or indirect ownership interest in franchisee. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on NOVEMBER 20, 1996 shall apply; provided, however, that

(i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and

(ii) Section 318(a)(5)(C) shall be disregarded.

For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

(c) "Agreement" shall mean a non-exclusive franchise agreement between the City and a franchisee for collection and subsequent transfer, transportation, recycling, processing, and disposal of commercial, industrial, and certain residential solid waste.

(d) "Central Traffic District" shall be defined in accordance with San Diego Municipal Code section 81.01.5.

(e) "City" shall mean The City of San Diego, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified.

(f) "Collect" or "Collection" shall mean to take physical possession and transport solid waste within the City.

(g) "Construction and Demolition Waste" shall mean mixed solid waste containing less than 10% of organic materials generated as a result of construction and/or demolition activities, and which may include a mixture of concrete, asphalt, wood, metals, bricks, dirt, rocks and other inert solid waste.

(h) "Council" shall mean the City Council of The City of San Diego.

(i) "Designated Waste" shall be defined in accordance with the California Code of Regulation, Title 23, Division 3, Chapter 15, Article 2, Section 2522.

(j) "Director" shall mean the Director of Environmental Services of The City of San Diego or a duly authorized representative.

(k) "Disposal" shall mean the final disposition of any solid waste collected by franchisee at a permitted landfill or other permitted facility.

(l) "Disposal Site(s)" shall mean permitted solid waste handling facility or facilities for the ultimate disposal of solid waste collected by franchisee.

(m) "Environmental Laws" shall mean all federal, state, and local statutes, local, and City ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC § 9601 et seq. (CERCLA); the Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (RCRA); the Federal Clean Water Act, 33 USC § 1251, et seq; the Occupational Safety and Health Act, 29 USC § 651 et seq; the California Hazardous Waste Control Act, California Health and Safety Code § 25100, et seq.; the California Toxic Substances Account Act, California Health and Safety Code § 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

(n) "Facility" shall mean any plant or site owned, leased, maintained, operated, or used by franchisee for purposes of performing under this division.

(o) "Franchise" shall mean the special right granted by the City, as authorized in this division, to operate as a non-exclusive enterprise for solid waste collection services within the City.

(p) "Franchisee" shall mean any person or business who holds a valid, unrevoked, and unexpired City-granted, non-exclusive franchise to operate on public property an enterprise for the collection and subsequent transportation, or disposal of solid waste within the City.

(q) "Green Material" shall mean any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. Green material includes, but is not limited to, yard trimmings, plant wastes from the food processing industry, manure, untreated wood wastes, paper products, and natural fiber products. Green material does not include treated wood waste, mixed demolition or mixed construction debris.

(r) "Hazardous Substance" shall mean any of the following:

(1) any substances defined, regulated, or listed (directly or by reference) as "hazardous substances," "hazardous materials" "hazardous wastes," "toxic wastes," "pollutants," "toxic substances," or similarly identified as hazardous to human health or the environment, in or pursuant to

(i) (CERCLA);

(ii) the Hazardous Materials Transportation Act, 49 USC § 1802, et seq.;

(iii) (RCRA)

(iv) the Federal Clean Water Act, 33 USC § 1251 et seq.,

(v) California Health and Safety Code §§ 25115-25117, 25249.8, and 25316;

(vi) the Clean Air Act, 42 USC § 7401 et seq.; and

(vii) California Water Code § 13050;

(2) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and

(3) any other hazardous or toxic substances material, chemical, waste, or pollutant identified as hazardous or toxic, or regulated under any other applicable federal, state, or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCECs"), petroleum, natural gas, and synthetic fuel products and by-products.

(s) "Hazardous Waste" shall mean all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code § 25110.02, § 25115, and § 25117, or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency (EPA), pursuant to RCRA, all future amendments thereto, and all rules and regulations promulgated thereunder.

(t) "Highway" shall mean any public street, road, alley, sidewalk, highway, or thoroughfare, and all areas within the right of way of boundaries thereof.

(u) "Manager" shall mean the City Manager of The City of San Diego, or a duly authorized representative, who may also be the Director except in the case of all appeals of the Director's decision.

(v) "Medical Waste" shall mean any solid waste which is generated or has been used in the diagnosis, treatment or immunization of human beings or animals, or research pertaining thereto, and shall include, but not limited to, biohazardous and medical waste, or other solid waste as defined by federal, state or local law.

(w) "Person" shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the City and County of San Diego, towns, cities, and special purpose districts.

(x) "Recyclable" shall mean a material which can be processed into a form suitable for reuse through reprocessing or remanufactured consistent with the requirements of AB 939.

(y) "Recyclable Materials" means residential, commercial or industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for collection in a manner different from refuse.

(z) "Recyclable Materials Collector" shall mean an enterprise that collects recyclable materials within the City. A recyclable materials collector shall not be authorized to collect any material that contains greater than ten (10) percent by volume of solid waste.

(aa) "Recycling" shall mean the process of separating for collection, collecting, treating, and/or reconstituting recyclable materials that would otherwise be discarded without receiving compensation, and returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The collection, transportation, or disposal of solid waste not intended for, or capable of reuse, is not recycling. For the purpose of this article, recycling does not include use of solid waste for conversion to energy.

(bb) "Refuse" shall mean any mixture of putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash, residential refuse as defined herein and in Section 66.0127 of this Code, industrial and commercial solid and semi-solid wastes,

vegetable or animal solid and semi-solid wastes, and other solid and semi-solid wastes destined for disposal sites.

(cc) "Solid Waste" shall mean all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash, refuse, rubbish, construction and demolition wastes, metallic discards, vegetable or animal solid or semi-solid wastes, and other solid or semi-solid wastes. "Solid Waste" does not include hazardous waste, hazardous substances, medical waste, or recyclable materials.

(dd) "Waste Generator" shall mean any person as defined by California Public Resources Code § 40170, whose act or process produces solid waste as defined in California Public Resources Code § 40191, or whose act first causes solid waste to become subject to regulation.

SEC. 66.0103 Disposal of Solid Waste; Liability for Expense of Cleanup

(a) It shall be unlawful for any person to place or deposit or hire any other person to place or deposit any solid waste upon the right of way of any highway or upon any camping place or public grounds or upon any public or private property except where such property is a permitted solid waste facility.

(b) Any person who deposits or places any such solid waste upon the right of way of any highway, camping place, public grounds, or any public or private property other than a permitted solid waste facility, in addition to any other penalty, be liable for the payment of the cost of any and all expense necessary to clean or clear the property of the solid waste and restore it to its natural or former condition.

SEC. 66.0104 Transportation of Solid Waste

No person shall convey or transport solid waste upon or along any public highway in the City unless such solid waste is contained and/or covered or otherwise secured so as

to minimize leaking, and prevent falling, blowing or scattering from the vehicle, container, or equipment in which it is being conveyed or transported: provided, however, that the top cover of a vehicle engaged in the collection of solid waste may expose one-third of the vehicle bed while traveling between pickup stops where said stops are separated by less than one-quarter mile. When traveling between collection routes and a disposal site, all loads of solid waste must be completely covered. All vehicles, containers and equipment used in the transportation of any form of solid waste shall be kept clean, and no person shall drain or allow to be drained the liquid from any such vehicle upon any other land in such manner as to create an unsanitary condition. Persons transporting solid waste on the public highways shall completely empty the solid waste from their vehicles and/or containers at the disposal site in order to prevent the scattering of residue on the return trip.

SEC. 66.0105 Solid Waste Collection — Hours for Placing Containers on Sidewalk, Curb, Etc.

It shall be unlawful for any person to place, deposit or permit to remain any solid waste or containers therefor on the public streets, curbs, curbing or sidewalks before 6:00 o'clock p.m. of the day prior to the regular day for collection by the City or franchisee of such solid waste, or after 6:00 o'clock p.m. of such regular collection day.

SEC. 66.0106 Solid Waste Collection — Central Traffic District — Hours for Placing Containers on Sidewalk, Curb, Etc.

It shall be unlawful for any person to place, deposit or permit to remain any solid waste or containers therefor on the public streets, curbs, curbing, or sidewalks in any Central Traffic District as established by City ordinance before 6:00 o'clock a.m. of the regular day for collection by the City or franchisee of such solid waste, or to permit any such materials or containers therefor to remain in such places after 10:00 o'clock a.m. of

such day or one (1) hour after such materials in the same block have been removed, whichever is later.

Section 2. That Chapter VI, Article 1, of the San Diego Municipal Code be and the same is hereby amended by repealing sections 66.0107, 66.0108, 66.0109, 66.0110, 66.0111, 66.0112, 66.0113, 66.0114, 66.0115, 66.0116, 66.0118, 66.0119, and 66.0121.

Section 3. That Chapter VI, Article 1, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering sections 66.0117 to 66.0124 and 66.0120 to 66.0125, as follows:

66.0124 RULES AND REGULATIONS

The collection and subsequent transportation and disposal of refuse within The City of San Diego is under the supervision of the Manager who shall have the power to promulgate rules and regulations regulating such collection and subsequent transportation and disposal, including but not limited to:

- (a) Collection routes and scheduling and designation of disposal sites and any limitations thereon;
- (b) Service standards and pickup locations; and
- (c) Handling of hazardous materials.

A copy of said rules and regulations and all amendments thereto shall be sent by registered or certified mail, postage prepaid, to all affected franchisees addressed to their last place of business. To the extent not otherwise provided by law, it shall be unlawful for a franchisee to collect and subsequently transport or dispose of refuse contrary to any regulation, order, permit or requirement promulgated by the Manager.

SEC. 66.0120 VEHICLE INSPECTION AND TAGS

All vehicles and other equipment used in the collection and subsequent transportation, and disposal of refuse shall be inspected as often as the Manager deems necessary and at such times and places as shall be designated by said Manager. The Manager shall provide for each vehicle operated by the franchisee, a durable tag or decal upon payment of the applicable franchise fee. Such tag or decal shall be securely fastened and maintained by the franchisee on each vehicle so as to be clearly visible. The Manager may suspend the tag or decal of any vehicle that fails to meet the requirements of this article as such vehicle shall not be used for the collection and subsequent transportation or disposal of refuse until the tag or decal has been reinstated by the Manager. In the event any vehicle fails to meet the requirements of this article, or in the event any vehicle becomes temporarily or permanently inoperable or unavailable, the franchisee may transfer said vehicle's tag or decal to another vehicle to be operated by franchisee which vehicle has passed City inspection and does meet the requirements of this article.

Section 4. That Chapter VI, Article 1, of the San Diego Municipal Code be and the same is hereby amended by renumbering sections 66.0122 to 66.0126, 66.0123 to 66.0127, 66.0124 to 66.0128, 66.0125 to 66.0129, 66.0126 to 66.0130, and 66.0127 to 66.0131.

Section 5. That Chapter VI, Article 1, of the San Diego Municipal Code be and the same is hereby amended by adding new sections 66.0107, 66.0108, 66.0109, 66.0110, 66.0111, 66.0112, 66.0113, 66.0114, 66.0115, 66.0116, 66.0117, 66.0118, 66.0119, 66.0120, 66.0121, 66.0122, 66.0123, and 66.0132, to read as follows:

Section 66.0107 Solid Waste Collection Franchises — Purpose and Declarations

(a) It is hereby declared and determined that the business of collecting and subsequently transferring, transporting, disposing, and/or recycling of solid waste affect the health, safety, public welfare, and the quality of life of the residents of the City.

Therefore, it is one purpose of this division to regulate such 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 purpose of this division, aside and apart from regulation, to require compensation for the value of the franchise issued.

SEC. 66.0108 Franchise Requirement

(a) Except as provided below and in Section 66.0109 of this Code, no person shall collect and subsequently transport, and/or dispose of residential or commercial solid waste in the City without first obtaining from the City a current agreement to perform such services. The agreement shall include all the terms and conditions for the collection and subsequent transfer, transportation, processing, and disposal of such material in the City. The franchisee is obligated to comply with the provisions of the agreement on its effective date.

(b) No vehicle shall be used in the collection and subsequent transportation, and/or disposal of solid waste within the City unless it carries a current, unrevoked tag or decal issued by the City authorizing such activity.

Section 66.0109 Franchise Exclusions

The following types of solid waste collection are excluded from the franchise requirement, however, their transport must be made in compliance with the provisions of Section 66.0104:

(a) All residential refuse collected on public streets in the City, which the City is obligated to collect under Section 66.0127.

(b) All residential refuse collected on private streets for which there is a valid hold harmless agreement to provide such service, as described in Section 66.0127.

(c) All recyclable materials.

(d) Containers delivered for recycling under the California Beverage Container Recycling and Litter Reduction Act, California Public Resources Code, § 14500, et seq.

(e) Green material removed from a premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service.

(f) Solid waste that is generated at any premises and which is removed and transported personally by the owner or occupant of such premises (or by his/her other full-time employees) to a licensed solid waste management facility, transfer station or disposal site in a manner consistent with the San Diego Municipal Code and other applicable laws.

(g) Construction and demolition waste or debris removed from a premises by a licensed demolition or construction contractor using its own employees and its own or rented equipment as an incidental part of a total service offered by that contractor rather than as a hauling service.

(h) Hazardous waste, medical waste and designated waste regardless of its source.

(i) By-products of sewage treatment, including sludge, sludge ash, grit, and screenings.

(j) Residue or non-processible waste from a solid waste management facility, including material recovery, composting, and transformation facilities.

(k) Animal waste and remains for use as tallow.

(l) Municipal corporations and other governmental agencies using their own vehicles engaged in the collection, transportation, or disposal of solid waste within the City.

SEC. 66.0110 Franchise Authority to Grant

(a) The Council may grant to qualified applicants a franchise for use of City's streets and right-of-ways for the collection and subsequent transfer, transportation, recycling, processing, and disposal of commercial, industrial, and certain residential solid waste kept, accumulated, or produced in the City.

(b) The Council may grant a franchise to applicant based on compliance with this division. Any grant of a franchise by the Council may be subject to such terms, conditions, rules, regulations, restrictions, and limitations as the Council deems necessary to protect the public health, safety, or welfare.

(c) The Council hereby empowers and grants to the Manager the authority to administer and negotiate nonsubstantive changes to the franchise agreements.

SEC. 66.0111 Franchise Terms and Conditions

(a) All franchises granted to persons pursuant to this division shall be non-exclusive.

(b) All franchises shall be subject to the terms and conditions specified in the City Charter, in this division, in the agreement, and in all other applicable federal, state, and local laws and regulations.

(c) In granting any franchise, the Council may prescribe additional terms and conditions not in conflict with the City Charter or this division.

SEC. 66.0112 Franchise Application Process

(a) Applications for agreements to provide for the collection and subsequent transfer, transportation, processing, and disposal of commercial, industrial and certain residential solid waste kept accumulated, or produced in the City shall be on a City-approved form and shall be filed with the Director. Applications for such franchises shall include, but not be limited to, the following information:

(1) Identification

(i) Name and title of the applicant.

(ii) Business address and telephone number of the applicant.

(iii) Address where all vehicles and operating equipment used within the City will be kept.

(iv) If applicant is a partnership, the name and address of each partner and their percentage of ownership. If the applicant is a corporation, 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. If the applicant is an affiliate or a franchised operation of another corporation (not to be confused in this instance with a solid waste franchisee of the City), list the names and addresses of the parent or subsidiary companies, together with a description of their business interests and/or ownership. If the applicant is a joint venture or other combination of persons and corporations, identify separately the names and addresses of each member of the joint venture or combined effort, together with their percentage interest.

(2) Business Operations

(i) Attestation that books and accounts of all revenue and income arising out of its operations will be kept in a manner that conforms with Generally Accepted Accounting Principals.

(ii) Obtain insurance prior to commencing business subject to the agreement.

(iii) Maintain and report on a timely basis all operational information and data elements needed by the City to comply with its reporting requirements such as those established under AB 939, and as defined in the agreement.

(iv) A complete listing and explanation of any civil or criminal rulings or judgments in excess of five-thousand dollars (\$5,000), or convictions against applicant, occurring within the last five (5) years.

(3) Facilities and Equipment

(i) A description of all vehicles and equipment that the applicant owns, has control of, or intends to acquire for the collection, transportation, or disposal of

solid waste in the City and which are subject to the provisions of the agreement. A statement as to whether said vehicles and equipment are self unloading and equipped with audible automatic back-up warning devices. The minimum vehicle description for existing vehicles shall include Vehicle Identification Number (VIN) and license plate number.

(ii) Evidence demonstrating that the applicant owns or will have access to suitable facilities for keeping vehicles and equipment clean and in good repair, and that the applicant owns or will have access to reasonable office and billing facilities.

(iii) Evidence demonstrating that the applicant owns or will have the legally enforceable right to use at least two collection vehicles, the bodies of which are closed, leak resistant, and constructed for the purpose of solid waste collection, transportation, and disposal. In the alternative, for the purposes of this provision, an applicant may demonstrate by the evidence that they service and transport open-top roll-off boxes for the collection, transportation, and disposal of nonputricible waste and/or roll-off compaction boxes which are closed, leak resistance, and are constructed for the purpose of solid waste collection, transportation, and disposal.

(4) Services Provision

(i) A general description of the geographic area to be served, if less than the entire City.

(ii) A report of collection activity (number of accounts and tons collected) within the City for the prior calendar year, if any, or a description of plans showing proof of ability to provide such services.

(5) Other

(i) Any additional evidence which demonstrates that the applicant is able to render collection and subsequent transportation, and/or disposal services in accordance with applicable federal, state and local statutes.

SEC. 66.0113 Franchise Term

The initial term for any agreement shall not exceed seven (7) years. Any such agreement may be extended by the Council under the terms and conditions provided for in agreement.

SEC. 66.0114 Franchise Application Review Process

(a) The Council may award franchises for the collection of certain residential and commercial solid waste within the City. The franchises awarded by the Council shall be granted to currently licensed private haulers meeting all terms and conditions of both this division and agreement.

(b) Applicants may submit their completed application for a franchise, as provided in Section 66.0112, to the Director for review and consideration at any time during a designated application period. The Director shall review such submittals and either make a recommendation to the Council to award such franchise, or notify applicant of denial, all within a reasonable period of time.

(c) The Director shall take into consideration all components of the completed application, including but not limited to

- (1) the ability of the applicant to meet all terms of the agreement;
- (2) any history of civil or criminal convictions that may compromise the public's interests; and
- (3) the completeness, accuracy, and validity of the application.

The Director shall also have the authority to verify independently any and all statements made and implied in the application. The Director may also request clarification from applicant of any or all elements of the submitted application.

- (d) After a reasonable review period, the Director shall either
 - (1) deny an award and notify the applicant in writing of the reasons why the award was denied; or
 - (2) recommend to the City Manager that a franchise be awarded; or

(e) if the Director fails to act on a franchise application within thirty (30) days from the receipt of said application, the applicant may at his or her option deem the application denied.

Upon concurrence with a positive recommendation, the Council will award the franchise within a reasonable period of time. The Manager will notify applicant in writing of an award.

SEC. 66.0115 Appeal Upon Denial of Award

(a) Within thirty (30) days of the written notification of award denial or within thirty (30) days of Director's failure to act on the franchise application, applicant has the right to meet with the Manager to review the items cited in the written notice and provide any additional evidence to support an award. Within fifteen (15) days of such meeting, the Manager will make a final, written determination of the application, based on the

reviews of additional evidence, together with the original application. Manager will send a copy of all final, written determinations, including reasons for denial, if any, to both applicant and the Director.

(b) Applicant may, within ten (10) days after receiving the Manager's denial, request a public hearing before the Council by submitting to the City Clerk a written petition for an appeal hearing. If a public hearing is requested, the City Clerk shall set the matter for hearing within thirty (30) days of the written request or any later date as agreed upon by the applicant and City Clerk. At such hearing, applicant may present evidence in writing and through testimony of its employees and others relevant to the application. During such hearing, the Council may demand from the applicant such additional information as the Council may deem relevant and necessary. Standard rules of evidence are not in effect at such public hearing, and the applicant shall have the burden of proof to show facts demonstrating that the applicant does in fact meet the requirements of this division. Any hearing may be continued or adjourned to a stated time and place without the giving of further notice. The Council will provide applicant with a written explanation of his or her determination on the application within thirty (30) days of such hearing. The Council's decision is final.

(c) If the term of an applicant's existing franchise expires while the application is under City review, the Council may administratively extend the term for such period of time as is required to complete the appeal process.

SEC. 66.0116 Awarding of Franchise

(a) A franchise shall become effective only once a written agreement has been signed by the applicant and the City, and upon applicant's satisfying all of the

requirements and conditions set forth in both this division and the agreement which require an agreement to become effective.

(b) Prior to performing any services provided under the award of a franchise, franchisee must provide to the City copies of all required certificates of insurance, and certificates of bonding, as enumerated in the agreement. Should franchisee fail to maintain all such insurance, and bonding requirements uninterrupted for the term of the agreement, the City will immediately suspend or terminate such agreements.

(c) If franchisee's description of vehicles and equipment, as required under Section 66.0112, has changed between the application date and the effective date of the agreement, then franchisee must submit to Manager an amended description, including all identification elements required under Section 66.0112, prior to commencing services authorized in the agreement.

SEC. 66.0117 Franchise Operations

(a) All customer agreements must contain clauses that automatically terminate such customer agreements in the event that the agreement with the City is terminated.

(b) Franchisee must offer recycling services to each of its customers or provide its customers with a list of companies who provide recycling services in the area.

(c) The agreement shall provide for the requirements relating to the frequency and hours of collection, the size, placement and care of the containers, and special collections.

SEC. 66.0118 Franchise Fees

The City may impose franchise fees pursuant to resolutions adopted by Council. Any such fees will be paid as specified in the agreement.

SEC. 66.0119 Other Franchise Provisions

(a) The Council may expand or contract the scope of the agreement over time due to changes in law or interpretations of law.

(b) The Manager has the right to inspect franchisee's records for purposes of determining AB 939 and other reporting requirements. The Manager may also inspect franchisee's records to determine proper calculation and payment of franchise fees. The Manager will provide franchisee with reasonable notice of its intent to inspect any of franchisee's records.

(c) The Manager retains the right to terminate or suspend the agreement, as provided in the agreement.

SEC. 66.0120 Transfer of Franchise

Any franchise granted pursuant to this division is a privilege to be held in trust by the original franchisee. A franchise issued under this division shall not be transferred, sold, leased, assigned, relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, without the prior approval of the Council which shall not be unreasonably withheld. This restriction includes the transfer of ownership of the franchise, or a majority of the ownership or control of the franchisee, or the conveyance of a majority of the franchisee's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by franchisee.

SEC. 66.0121 Indemnification

(a) Franchisee agrees to defend, with counsel to be agreed upon by both parties, indemnify, and hold harmless, City and its agents, officers, servants, and employees from

and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to City's employees, agents, or officers which arise from, or are connected with, or are caused or claimed to be caused by acts or omissions of franchisee, or their agents, officers or employees, in the performance of the nonexclusive franchise agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of the City, its agents, officers, or employees.

(b) Except for any Disposal Site owned or operated by the City, including without limitation the Miramar Landfill located adjacent to Highway 52 between Interstate 805 and Interstate 15 ("Miramar Landfill"), Franchisee shall indemnify, defend, with counsel to be agreed upon by both parties, 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 damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, 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 or agents arising from or attributable to any repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial,

response, closure, or other plan (regardless of whether undertaken due to government action) concerning any hazardous substance or hazardous wastes at any disposal or processing facility, excluding those facilities owned or operated by the City, where solid waste is or has been transported, transferred, processed, stored, disposed of, or has otherwise come to be located by franchisee or its activities pursuant to an agreement resulting in a release of any hazardous substance into the environment.

(c) Without limiting the substance of this indemnification, the foregoing indemnity is intended to operate as an agreement pursuant to 107(e) of (CERCLA), 42 U.S.C. 9607(e), and California Health and Safety Code § 25364, to defend, protect, hold harmless) and indemnify the City from all forms of liability under CERCLA, other applicable statutes or common law for any and all matters addressed in this provision. This provision shall survive the expiration of the term of this agreement.

(d) Notwithstanding anything to the contrary in this agreement, upon the effective date of the agreement, the City shall indemnify, defend with counsel to be agreed upon by both parties, protect and hold harmless Franchisee, its officers, directors, employees, agents, assigns and any successors to Franchisee's interest, from and against all claims, actual damages (including, but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings, interest, fines, 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, Franchisee or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to government action) concerning any hazardous substance or hazardous waste arising from any Disposal Site owned or operated by the City, including without limitation the Miramar Landfill.

(e) Without limiting the substance of this indemnification, the foregoing indemnity is intended to operate as an agreement pursuant to 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as "Superfund," 42 USC § 9607(e), and California Health and Safety Code § 25374, to defend, protect, hold harmless and indemnify Franchisee from all forms of liability under CERCLA, other applicable statutes or common law for any and all matters addressed in this provision. This provision shall survive the expiration of the term of this agreement.

66.0122 Insurance

(a) Each franchisee shall maintain, at its own expense, insurance coverages, as provided in the agreements or as established from time to time by the Manager. All such insurance shall remain in effect, uninterrupted, through the term of the agreement.

(b) Minimum insurance coverage shall include the following items, in amounts to be determined by the Manager: Comprehensive General Liability and Insurance Services Office covering Broad Form Comprehensive General Liability Automobile Liability;

Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

SEC. 66.0123 Performance Bonds

(a) Each franchisee shall file with the City a bond, payable to the City, securing Franchisee's faithful performance of its obligations under the agreement. The principal sum of the bond shall be established by the Manager. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the Manager.

(b) In the alternative, franchisee may deposit a letter of credit or open a certificate of deposit in the name of the City to be held to secure this faithful performance in an amount to be established by the Manager.

SEC. 66.0132 Penalty for Operating Without a Franchise

(a) Any person who collects, transports, disposes, and/or recycles solid waste without first obtaining a current, unrevoked franchise to do so is in violation of this division, is operating in an unregulated manner, and is putting at risk the health and welfare of the citizens of the City. The Manager may assess fines on any person, or prosecute such person criminally, civilly, or both, to the extent allowed by law, for operating in such manner without a current, unrevoked franchise. The Council may establish fines for violations of this division from time to time.


Section 6. The City Clerk is hereby instructed to insert the effective date of this ordinance, once known, in the blank space provided in Sec. 66.0102 Definitions of the Municipal Code section of the ordinance.

Section 7. The City Clerk is hereby instructed to make the necessary changes in the San Diego Municipal Code to reflect the renumbering of code sections, where ever it may appear, as follows:

66.0117 to 66.0124
66.0120 to 66.0125
66.0122 to 66.0126
66.0123 to 66.0127
66.0124 to 66.0128
66.0125 to 66.0129
66.0126 to 66.0130
66.0127 to 66.0131

Section 8. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Catherine M. Bradley
Deputy City Attorney

ELH:CMB:smf:jab
09/06/96
10/07/96 COR. COPY
01/27/97 2nd COR. COPY
10/29/99 3rd COR. COPY
01/13/04 4th COR. COPY
Or.Dept:Env.Serv.
O-97-3
Form=o.code