

#59  
10/18/16

ORDINANCE NUMBER O- 20736 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 01 2016

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 66.0102, 66.0109, AND 66.0119, AND AMENDING CHAPTER 6, ARTICLE 6, DIVISION 7 BY AMENDING SECTIONS 66.0703, 66.0714, AND 66.0716, ALL RELATING TO THE RECYCLABLE MATERIAL FRANCHISE EXCLUSION FOR SOLID WASTE COLLECTION FRANCHISES.

WHEREAS, the City of San Diego (City) operates the Miramar Landfill (Landfill), which is currently the only active municipal landfill in the City; and

WHEREAS, the Landfill is currently expected to close by 2030 and it is of paramount concern to preserve Landfill capacity in order to extend the useful life of the Landfill for the benefit of the City's citizens; and

WHEREAS, the Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), requires that each local jurisdiction in the State divert at least 50% of solid waste from landfill disposal, beginning in the year 2000 and each year thereafter, or be subject to fines of up to \$10,000 per day; and

WHEREAS, Assembly Bill 341 (AB 341), adopted in 2011, declares that it is the policy goal of the State that not less than 75% of solid waste generated be source reduced, recycled, or composted by the year 2020; and

WHEREAS, on July 28, 2015, the City Council adopted a Zero Waste Plan that targets 75% waste diversion by the year 2020, 90% waste diversion by the year 2035, and Zero Waste by the year 2040; and

WHEREAS, San Diego Municipal Code (SDMC) section 66.0109 establishes exclusions from the City's non-exclusive solid waste collection franchise requirement; and

WHEREAS, Report to the City Council No. 15-063, dated June 17, 2015, which accompanied the City's Zero Waste Plan, identified removal of the recyclable material franchise exemption under SDMC section 66.0109(c) as a potential financing mechanism to achieve 75% diversion in the City by the year 2020; and

WHEREAS, on February 2, 2016, the City Council approved amendments to the City's non-exclusive solid waste collection franchise agreements that, subject to amendment of SDMC section 66.0109(c), permit the City to subject recyclable materials, or a portion thereof, to the franchise requirement; and

WHEREAS, the City desires to amend SDMC section 66.0109(c), and related sections, in order to subject certain recyclable materials to the franchise requirement, and thus provide a financing mechanism for implementation of the City's Zero Waste Plan, and support for the State's and City's waste diversion efforts; and

WHEREAS, the Environment Committee heard this item on March 17, 2016, and recommended City Council approval of the ordinance, with direction to staff to include a recyclable materials franchise exemption for recyclable materials collectors meeting certain conditions; and

WHEREAS, as described in Report to the City Council No. 16-024, dated September 20, 2016, staff has incorporated a franchise exemption for recyclable materials collectors consistent with Committee direction; NOW, THEREFORE,

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

Section 1. That Chapter 6, Article 6, Division 1 of the San Diego Municipal Code is amended by amending sections 66.0102, 66.0109, and 66.0119, to read as follows:

**§66.0102 Definitions**

All defined terms in this Division appear in italics. For the purposes of this Division, the following definitions apply:

*AB 939 through Central Traffic District* [No change in text.]

*Certified Recyclable Materials Collector* has the same meaning as in San Diego Municipal Code section 66.0703.

*City through Disposal Site(s)* [No change in text.]

*Diversion* has the same meaning as in San Diego Municipal Code section 66.0703.

*Environmental Laws through Facility* [No change in text.]

*Food Material* means material originally acquired for animal or human consumption, including that from a “food facility” as defined in California Health and Safety Code section 113789. *Food material* does not include “agricultural material” as defined in the California Code of Regulations, title 14, section 17852.

*Franchise through Refuse* [No change in text.]

*Solid Waste* means all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash refuse, rubbish, *construction and demolition waste*, 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 the *recyclable materials* specified in section 66.0109(c).

*Solid Waste Facility through Waste Generator* [No change in text.]

**§66.0109 Franchise Exclusions**

The following types of solid waste collection are excluded from the franchise requirement, except that their transport shall be subject to section 66.0104:

(a) through (b) [No change in text.]

(c) *Recyclable materials* as follows:

(1) Until June 30, 2017, all *recyclable materials*.

(2) Beginning July 1, 2017, the following *recyclable materials*:

(A) *Recyclable material* that is sold or donated by a *person*.

*Recyclable material* shall be subject to the franchise requirement if the seller or donor pays the buyer or donee any consideration for the collection, processing, *recycling*, transportation and/or *disposal* of the *recyclable material*, and the consideration collectively exceeds the fair market value of the *recyclable material*.

(B) *Recyclable material* that consists of inert material, such as concrete, asphalt, dirt, and rock.

(C) *Recyclable material* that consists of shredded document material that is removed from residential or commercial property by a *person* engaged in the business of providing secure document shredding services, and where its removal is an incidental part of the total shredding services offered by that *person*.

- (D) *Recyclable material* that is collected by a *certified recyclable materials collector*, as limited by the following:
- (i) The *certified recyclable materials collector* holds a valid certification granted by the *Director* in accordance with San Diego Municipal Code section 66.0714, and the valid certification is granted prior to DEC 01 2016, and is continuously maintained thereafter; or the valid certification is granted after DEC 01 2016, so long as a complete application for such certification was submitted to the *Director* prior to DEC 01 2016. The franchise exclusion shall not begin to apply until a valid certification is granted;
  - (ii) The amount of *recyclable material* collected within the *City* under this exclusion may not exceed 1,000 tons per year. For the purposes of this subsection, the annual tonnage of *recyclable materials* collected in the *City* by the *certified recyclable materials collector*, its parent company, and all affiliates shall be combined;
  - (iii) The *recyclable materials* do not include *food material*; and

- (iv) The *certified recyclable materials collector* achieves an annual 90% *diversion* rate. The *certified recyclable materials collector* shall certify their *diversion* rate in their annual reporting under San Diego Municipal Code section 66.0711.

(d) through (m) [No change in text.]

**§66.0119 Other Franchise Provisions**

(a) through (d) [No change in text.]

- (e) Beginning July 1, 2017, in conjunction with *franchisee's* annual reporting under San Diego Municipal Code section 66.0711, *franchisee* shall certify on a form or using a format prescribed by the *Director*, that all *recyclable material* that *franchisee* serviced during the period from July 1 through June 30 of the immediately preceding twelve-month period, which *franchisee* claims as exempt from the franchise requirement under section 66.0109(c)(2)(A), was sold or donated by a *person*. *Franchisee's* certification shall include:

- (1) The name and address of each *person* that sold or donated *recyclable material* to *franchisee*;
- (2) The date(s) that *franchisee* collected the sold or donated *recyclable material* from the *person*;
- (3) The total amount of sold or donated *recyclable material*, measured in tons, that *franchisee* collected from each *person*; and

- (4) A written statement, signed by each *person*, certifying that the *person* sold or donated the *recyclable material* to *franchisee*.

Section 2. That Chapter 6, Article 6, Division 7 of the San Diego Municipal Code is amended by amending sections 66.0703, 66.0714, and 66.0716, to read as follows:

**§66.0703 Definitions**

All defined terms in this Division appear in *italics*. For purposes of this Division, the following definitions apply:

*AB 939 through Commercial facilities* [No change in text.]

*Construction and demolition waste* has the same meaning as in San Diego Municipal Code section 66.0102.

*Department through Franchisee* [No change in text.]

*Hazardous substance* has the same meaning as in San Diego Municipal Code section 66.0102.

*Hazardous waste* has the same meaning as in San Diego Municipal Code section 66.0102.

*Medical waste* has the same meaning as in San Diego Municipal Code section 66.0102.

*Mixed use facilities through Recyclable Materials* [No change in text.]

*Recyclable materials collector* has the same meaning as in San Diego Municipal Code section 66.0102.

*Recycling through Self-haul* [No change in text.]

*Solid waste* means all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash refuse, rubbish, *construction and demolition waste*,

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.*

**§66.0714 Certified Recyclable Materials Collector**

(a) *Certified Recyclable Materials Collector. A recyclable materials collector may apply to the Director to become a certified recyclable materials collector. The certification will be valid for no more than two years after the date it is issued by the Director, unless it is renewed in accordance with the Department's renewal procedures prior to its expiration. A certificate may not be transferred, sold, leased, or assigned, in whole or in part, to another person without prior Director approval. Approval may be obtained by filing an application with the Director on a form prescribed by the Director. The Director shall maintain a current list of certified recyclable materials collectors on the Department's website and in other educational materials published by the Department.*

(b) through (1) [No change in text.]

**§66.0716 Selling or Donating Recyclable Materials**

Nothing in this Division shall preclude any *person* from selling at fair market value, for reuse or *recycling*, source-separated *recyclable materials* owned by that *person*, or from donating to another entity, for reuse or *recycling*, source-separated *recyclable materials* owned by that *person*.

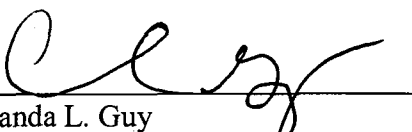


Section 3. The City Clerk is instructed to insert the effective date of this ordinance, once known, in the blank spaces provided in San Diego Municipal Code section 66.0109(c)(2)(D)(i).

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney


By   
Amanda L. Guy  
Deputy City Attorney

ALG:js  
08/12/16  
10/4/16 Cor. Copy  
Or.Dept:ESD  
Doc No.: 1333290\_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 18 2016

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

  
KEVIN L. FAULCONER, Mayor

Approved: 10/31/16  
(date)

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

(Note: The date of final passage is November 1, 2016, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: Struck Out**  
**NEW LANGUAGE: Double Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 66.0102, 66.0109, AND 66.0119, AND AMENDING CHAPTER 6, ARTICLE 6, DIVISION 7 BY AMENDING SECTIONS 66.0703, 66.0714, AND 66.0716, ALL RELATING TO THE RECYCLABLE MATERIAL FRANCHISE EXCLUSION FOR SOLID WASTE COLLECTION FRANCHISES.

**§66.0102 Definitions**

All defined terms in this ~~Article~~ Division appear in italics. For the purposes of ~~Article 6~~ this Division, the following definitions apply:

*AB 939 through Central Traffic District* [No change in text.]

*Certified Recyclable Materials Collector* has the same meaning as in San Diego

Municipal Code section 66.0703.

*City* through *Disposal Site(s)* [No change in text.]

*Diversion* has the same meaning as in San Diego Municipal Code section

66.0703.

*Environmental Laws* through *Facility* [No change in text.]

*Food Material* means material originally acquired for animal or human

consumption, including that from a “food facility” as defined in California Health

and Safety Code section 113789. Food material does not include “agricultural material” as defined in the California Code of Regulations, title 14, section 17852.

*Franchise through Refuse* [No change in text.]

*Solid Waste* shall mean all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash refuse, rubbish, ~~construction and demolition wastes~~ construction and demolition waste, 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 waste, ~~hazardous substances~~ hazardous substances, ~~medical waste~~ medical waste, or ~~recyclable materials~~ the recyclable materials specified in section 66.0109(c).

*Solid Waste Facility through Waste Generator* [No change in text.]

**§66.0109 Franchise Exclusions**

The following types of solid waste collection are excluded from the franchise requirement; ~~except that their transport shall be made in compliance with the provisions of~~ subject to ~~Section~~ Section 66.0104:

(a) through (b) [No change in text.]

(c) ~~All recyclable materials.~~ Recyclable materials as follows:

(1) Until December 31, 2016, all recyclable materials.

(2) Beginning January 1, 2017, the following recyclable materials:

(A) Recyclable material that is sold or donated by a person.

Recyclable material shall be subject to the franchise requirement if the seller or donor pays the buyer or donee any consideration for the collection, processing, recycling,

transportation and/or disposal of the recyclable material,  
and the consideration collectively exceeds the fair market  
value of the recyclable material.

(B) Recyclable material that consists of inert material, such as  
concrete, asphalt, dirt, and rock.

(C) Recyclable material that consists of shredded document  
material that is removed from residential or commercial  
property by a person engaged in the business of providing  
secure document shredding services, and where its removal  
is an incidental part of the total shredding services offered  
by that person.

(D) Recyclable material that is collected by a certified  
recyclable materials collector, as limited by the following:

(i) The certified recyclable materials collector holds a  
valid certification granted by the Director in  
accordance with San Diego Municipal Code section  
66.0714, and the valid certification is granted prior  
to \_\_\_\_\_, and is continuously  
maintained thereafter; or the valid certification is  
granted after \_\_\_\_\_, so long as a  
complete application for such certification was  
submitted to the Director prior to  
\_\_\_\_\_. The franchise exclusion shall

not begin to apply until a valid certification is granted;

- (ii) The amount of *recyclable material* collected within the *City* under this exclusion may not exceed 1,000 tons per year. For the purposes of this subsection, the annual tonnage of *recyclable materials* collected in the *City* by the *certified recyclable materials collector*, its parent company, and all affiliates shall be combined;
- (iii) The *recyclable materials* do not include *food material*; and
- (iv) The *certified recyclable materials collector* achieves an annual 90% *diversion* rate. The *certified recyclable materials collector* shall certify their *diversion* rate in their annual reporting under San Diego Municipal Code section 66.0711.

(d) through (m) [No change in text.]

**§66.0119 Other Franchise Provisions**

(a) through (d) [No change in text.]

- (e) Beginning January 1, 2017, in conjunction with *franchisee's* annual reporting under San Diego Municipal Code section 66.0711, *franchisee* shall certify on a form or using a format prescribed by the *Director*, that all *recyclable material* that *franchisee* serviced during the period from

July 1 through June 30 of the immediately preceding twelve-month period, which franchisee claims as exempt from the franchise requirement under section 66.0109(c)(1), was sold or donated by a person. Franchisee's certification shall include:

- (1) The name and address of each person that sold or donated recyclable material to franchisee;
- (2) The date(s) that franchisee collected the sold or donated recyclable material from the person;
- (3) The total amount of sold or donated recyclable material, measured in tons, that franchisee collected from each person; and
- (4) A written statement, signed by each person, certifying that the person sold or donated the recyclable material to franchisee.

**§66.0703 Definitions**

All defined terms in this Division appear in *italics*. For purposes of this Division, the following definitions apply:

*AB 939 through Commercial facilities* [No change in text.]

*Construction and demolition waste* has the same meaning as in San Diego

Municipal Code section 66.0102.

*Department through Franchisee* [No change in text.]

*Hazardous substance* has the same meaning as in San Diego Municipal Code

section 66.0102.

*Hazardous waste* has the same meaning as in San Diego Municipal Code section

66.0102.

Medical waste has the same meaning as in San Diego Municipal Code section 66.0102.

*Mixed use facilities through Recyclable Materials* [No change in text.]

*Recyclable ~~M~~materials ~~C~~ollector* has the same meaning as set forth in San Diego Municipal Code Section 66.0102 of this Article.

*Recycling through Self-haul* [No change in text.]

*Solid waste* has the same meaning as set forth in Section 66.0102 of this Article means all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash refuse, rubbish, construction and demolition waste, 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.

**§66.0714 Certified Recyclable Materials Collector**

- (a) *Certified Recyclables Materials Collector.* A ~~R~~recyclable ~~M~~materials ~~C~~ollector may apply to the Director to become a ~~C~~certified ~~R~~recyclable ~~M~~materials ~~C~~ollector. The certification will be valid for no more than two years after the date it is issued by the Director, unless it is renewed in accordance with the Department's renewal procedures prior to its expiration. A certificate may not be transferred, sold, leased, or assigned, in whole or in part, to another person without prior Director approval. Approval may be obtained by filing an application with the Director on a form prescribed by the Director. The Director shall maintain a current list

of ~~C~~certified R~~ecyclable M~~aterials C~~ollectors~~ on the *Department's* website and in other educational materials published by the *Department*.

(b) through (1) [No change in text.]

**§66.0716 Selling or Donating Recyclable Materials**

Nothing in this Division shall preclude any *person* from selling ~~or exchanging~~ at fair market value, for reuse or *recycling*,<sub>2</sub> source-separated *recyclable materials* ~~generated~~ owned by that *person*,<sub>2</sub> or from donating to another entity, for reuse or *recycling*,<sub>2</sub> source-separated *recyclable materials* ~~generated~~ owned by that *person*.

ALG:js  
08/12/2016  
Or.Dept: ESD  
Doc No.: 1320536\_3



Passed by the Council of The City of San Diego on OCT 18 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 01 2016

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 04 2016, and on NOV 01 2016

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California  
Ordinance Number O- 20736