

ORDINANCE NUMBER O- 21672 (NEW SERIES)DATE OF FINAL PASSAGE JUL 03 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE TRANSFER AND AUTHORIZING THE CONSENT TO ASSIGNMENT OF CLASS II NON-EXCLUSIVE SOLID WASTE MANAGEMENT FRANCHISES FROM WASTE MANAGEMENT, INC., FOR BDC SPECIAL WASTE SERVICES TO USA WASTE OF CALIFORNIA, INC., DBA BDC SPECIAL WASTE SERVICES; FROM WASTE MANAGEMENT OF CALIFORNIA, INC., DBA EMERALD WASTE & RECOVERY, INC. TO USA WASTE OF CALIFORNIA, INC., DBA EMERALD WASTE AND RECOVERY; AND FROM WASTE MANAGEMENT, INC., FOR RELIABLE WASTE TO USA WASTE OF CALIFORNIA, INC., DBA RELIABLE WASTE.

WHEREAS, by Ordinance No. O-19180, adopted on May 20, 2003, the Council of the City of San Diego (Council) authorized the execution of the First Amendment to Class I Non-Exclusive Franchise Agreement for Solid Waste Management Services and execution of new Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services with various solid waste franchisees; and

WHEREAS, on July 1, 2003, the City and Waste Management Inc., for BDC Special Waste Services (BDC Franchise), and Waste Management, Inc., for Reliable Waste (Reliable Franchise) entered into the Class II Non-Exclusive Franchise Agreement for Solid Waste Management Services, on file in the Office of the City Clerk as Document No. OO-19180-2 A through J (2003 Class II Agreement); and

WHEREAS, on July 1, 2003, the City and Emerald Waste & Recovery, Inc. (Emerald Franchise), entered into the Class I Non-Exclusive Franchise Agreement for Solid Waste Management Services, on file in the Office of the City Clerk as Document No. OO-19180-1 A through J; and

WHEREAS, by Ordinance No. O-20029, adopted on March 11, 2011, the Council authorized the transfer and consent to assignment of the Emerald Franchise to Waste Management of California, Inc., a Class II non-exclusive franchisee for the collection and management of solid waste; and

WHEREAS, the 2003 Class II Agreement has by ordinance been amended various times, and the BDC Franchise, Emerald Franchise, and Reliable Franchise are currently operating under the seventh amendment to the 2003 Class II Agreement which will expire on June 30, 2023; and

WHEREAS, by Ordinance No. O-21252, adopted on October 30, 2020, the Council authorized the transfer and consent to assignment of: the BDC Franchise to USA Waste of California, Inc., dba BDC Special Waste Services (USA BDC); the Emerald Franchise to USA Waste of California, Inc., dba Emerald Waste and Recovery (USA Emerald); and the Reliable Franchise to USA Waste of California, Inc., dba Reliable Waste (USA Reliable); and

WHEREAS, the parties thereafter became aware of a discrepancy in the name of the entities referenced in Ordinance No. O-21252 that held the BDC Franchise, the Emerald Franchise and the Reliable Franchise, and the City determined that this Franchise Transfer is necessary to correct that name discrepancy; and

WHEREAS, by Ordinance No. O-21560, adopted on November 14, 2022, the Council authorized the execution of amendments to the Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services in order to consolidate, merge, update, and amend the 2003 Class II Agreement, including all previous amendments, into one controlling document titled "Class II Non-Exclusive Franchise Agreement Between the City of San Diego and [Franchisee] For Solid Waste Management Services" with an effective date of January 1, 2023 (2023 Class II Agreement) on file in the Office of the City Clerk as Document No. OO-21560-2; and

WHEREAS, the 2023 Class II Agreement entirely supersedes the 2003 Class II Agreement, and all amendments thereto; and

WHEREAS, this action proposes to authorize the transfer of the BDC Franchise, Emerald Franchise, and Reliable Franchise and execution of consents to assignment retroactive to January 1, 2023, so there is no lapse in the franchises or their franchise agreements, and to coincide with the effective date of the 2023 Class II Agreement, execution of which is authorized by the accompanying Ordinance O-2023-170; and

WHEREAS, USA BDC has filed a franchise application to transfer the BDC Franchise to USA BDC and assign the 2003 Class II Agreement, as amended, to USA BDC (Consent to Assignment of BDC); and

WHEREAS, USA Emerald has filed a franchise application to transfer the Emerald Franchise to USA Emerald and assign the 2003 Class II Agreement, as amended, to USA Emerald; and

WHEREAS, USA Reliable has filed a franchise application to transfer the Reliable Franchise to USA Reliable and assign the 2003 Class II Agreement, as amended, to USA Reliable; and

WHEREAS, execution of the Consent to Assignment of the BDC Franchise, the Emerald Franchise, and the Reliable Franchise will result in a transfer of a franchise as defined under San Diego Charter section 103; and

WHEREAS, the transfer of a franchise requires Council approval under San Diego Charter section 103, San Diego Municipal Code section 66.0120, and article 10.5 of the franchise agreements; and

WHEREAS, under San Diego Charter section 103, no franchise transfer may be authorized except by Ordinance approved by a two-thirds majority vote of the Council; and

WHEREAS, this item was heard by the Environment Committee on May 25, 2023, which unanimously recommended approval of this item; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. That the transfer of the Class II Non-Exclusive Franchise for Solid Waste Management Services from Waste Management Inc., for BDC Special Waste Services to USA Waste of California, Inc., dba BDC Special Waste Services is hereby approved.

Section 2. That the transfer of the Class II Non-Exclusive Franchise for Solid Waste Management Services from Waste Management of California, Inc., dba Emerald Waste & Recovery, Inc. to USA Waste of California, Inc., dba Emerald Waste and Recovery is hereby approved.

Section 3. That the transfer of the Class II Non-Exclusive Franchise for Solid Waste Management Services from Waste Management, Inc., for Reliable Waste to USA Waste of California, Inc., dba Reliable Waste is hereby approved.

Section 4. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, consents to the assignment of these franchises, as set forth in the Consents to Assignment of Class II Non-Exclusive Franchise Agreement for Solid Waste Management Services, on file with the City Clerk as Document Nos. OO- 21672-1, OO-

21672-2 and OO- 21672-3

Section 5. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Jeanne L. MacKinnon
Deputy City Attorney

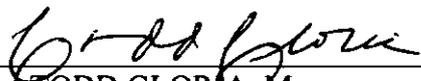
JLM:hm
05/25/2023
COR.COPY
June 26, 2023
Or.Dept:ESD
Doc. No.: 3317284

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 27 2023.

DIANA J. S. FUENTES
City Clerk

By 
Deputy City Clerk

Approved: 6/30/23
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(Note: The date of final passage is July 3, 2023, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

Passed by the Council of The City of San Diego on JUN 27 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 03 2023

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Connie Patterson 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

JUN 13 2023, and on JUL 03 2023.

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)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21672</u>