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COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

Supplemental Adoption Consent Unanimous Consent Rules Committee Consultant Review

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O - 2008-30

Implementation of a City Recycling Ordinance

Reviewed Initiated By NR&C On 9/26/07 Item No. 6

RECOMMENDATION TO:

Forward the ordinance to the full Council with direction to include specific guidelines regarding enforcement, in addition to a grace period after the 90 days for enforcement, and to provide a description of the process of appeal to the City Council.

VOTED YEA: Frye, Hueso, Maienschein, Faulconer

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO. 07-148

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

[Empty box for other information]

COUNCIL COMMITTEE CONSULTANT

M. F. [Signature]

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OFFICE OF INDEPENDENT BUDGET ANALYST
CITY OF SAN DIEGO
MEMORANDUM

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No. 07-13

DATE: October 26, 2007
TO: Honorable Council President and Members of the City Council
FROM: Tom Haynes, Office of the Independent Budget Analyst TH
SUBJECT: City Recycling Ordinance

On Tuesday, October 30, 2007 the City Council will consider the City Recycling Ordinance (CRO). If approved, the CRO will require single-family residences and multi-family, commercial and mixed-use facilities to participate in a recycling program. The Ordinance provides for a phased-in approach, whereby larger multi-family, commercial and mixed-use facilities will be required to participate in a recycling program within 90 days of final passage of the Ordinance, while participation by smaller facilities will be phased in over the next two years. The smallest facilities will be required to participate by January 1, 2010. In addition, the Ordinance provides exemptions for multi-family, commercial and mixed-use facilities that produce less than six cubic yards of refuse per week.

The IBA has reviewed the proposed CRO, and supports implementation of this program. It is estimated that the CRO will divert approximately 100,000 tons of recyclable material from area landfills each year, including 70,000 tons from the Miramar landfill. This is expected to increase the City's waste diversion rate by 2.5%, and extend the life of the Miramar landfill. While the IBA is supportive of the proposed Ordinance, we offer the following observations:

- There is a bit of concern with the number of exemptions that will be provided. We understand that there are cost and space constraints for very small facilities, and that a gradual implementation process is likely necessary. However, we are hopeful that over time recycling efforts could be extended to facilities of all sizes.
- The current Ordinance does not address public space recycling, whether in open space areas such as parks and beaches, or other public venues such as concerts. This is an area to which the City may wish to devote greater consideration in the future.
- This Ordinance puts a greater financial strain on the Recycling Enterprise Fund. While there will also be financial impacts to the other funds, including the General Fund and Refuse Disposal Fund, the Recycling Fund may see significant increased expenses related to expanded curbside recycling services and educational and enforcement costs, combined with reduced revenue from the loss of AB 939 fees. This will likely require significant financial mitigation efforts in upcoming years.



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THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 24, 2007 REPORT NO: 07-166
ATTENTION: Council President and City Council
Agenda of October 30, 2007
SUBJECT: City Recycling Ordinance
REFERENCE: Manager's Report No. 94-191 (July 7, 1994)
Manager's Report No. 95-91 (April 26, 1995)
Manager's Report No. 96-117 (May 28, 1996)
Manager's Report No. 98-61 (March 20, 1998)
Manager's Report No. 99-160 (July 28, 1999)
Manager's Report No. 04-175 (July 28, 2004)
Report to the City Council No. 07-148 (September 17, 2007)

REQUESTED ACTION:

1. Adopt an ordinance amending Chapter 6, Article 6 of the San Diego Municipal Code by adding Division 7, Sections 66.0701 - 66.0718 all relating to recycling for residential facilities, commercial facilities, mixed use facilities, and special events.
2. Authorize the Mayor to establish cost recovery fees for processing applications for exemptions from the recycling requirements and for applications to become a Certified Recyclable Materials Collector, and directing that these fee be filed in the Ratebook of City Fees and Charges in the Office of the City Clerk.
3. Find that the new application filing fees described above are for the purposes of meeting operational expenses associated with implementing and enforcing the requirements of the Ordinance.

STAFF RECOMMENDATION:

Adopt the recycling ordinance as prepared by the city attorney to require recycling of recyclable materials generated by residential, commercial, and mixed use facilities, as well as at special events within the city; authorize the mayor to establish the application processing fees; and find that such fees are for the purpose of meeting operational expenses associated with implementing and enforcing the recycling ordinance.

SUMMARY:

The California Integrated Waste Management Act of 1989 (AB939) required all cities to achieve a 50% waste diversion rate from landfill disposal by 2000 and to maintain that diversion rate on an ongoing basis. While the City's calendar year (CY) 2005 diversion rate was 52%, there are

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still substantial quantities of recyclable materials being unnecessarily disposed of in the region's landfills. With the Miramar Landfill expected to close in 2012 at current levels of waste disposal, the Mayor is taking action to reduce the flow of waste to landfills, increase recycling, and extend the life of the Miramar Landfill.

The Mayor recently brought forward proposed changes to the Municipal Code to trigger an ordinance passed by City Council in October 2005 to reduce the amount of construction and demolition (C&D) waste entering local landfills. The Recycling Ordinance proposed in this report addresses a different part of the waste stream, namely household and business recyclables such as paper, cardboard, glass and metal containers, and plastic bottles and jars that are entering local landfills. Waste composition studies show that over 400,000 tons of these types of recyclables are disposed from the City every year. ESD estimates that approximately 100,000 tons of waste could be diverted annually through this Recycling Ordinance, thus increasing the City's waste diversion rate by 2.5%.

Background

The Environmental Services Department (ESD) has identified increased commercial and multi-family waste reduction as an essential part of our integrated recycling program since the early 1990's. Since that time numerous recommendations have been made on how to address these waste streams. These include the Plan 2000 recommendations in 1994 to mandate recycling by 1999 and the August 1999 City Manager's Committee on Waste Reduction recommendations that the City implement an office paper landfill ban for buildings 20,000 square feet and larger, and that the City evaluate the feasibility of implementing a multi-family recycling program if funding is available.

Also in 1999, the Zero Based Management Review (ZBMR) recommended that the City implement a program for increasing commercial recycling, and on May 3, 2005, the San Diego County Grand Jury (2004-2005) released a report recommending San Diego convert to a mandatory recycling program. However, the City has continued to rely on voluntary efforts to encourage recycling and increase diversion in the business, multi-family, and single family sectors.

Discussion

While it is noteworthy to have achieved and maintained a diversion rate above 50% for 2004 and 2005, the variability in the City's past diversion rates serves as a reminder that we cannot necessarily expect the current 2% cushion to continue in future years. Based on the importance of extending the life of the Miramar Landfill, reducing greenhouse gas emissions, maintaining the required 50% diversion, and preparing for future legislation that may require greater diversion, the Mayor is proposing this Recycling Ordinance to address the waste generated by the commercial (including City buildings), multi-family, and single family sectors, as well as special events.

On August 8, 2007 the Mayor's Office hosted the first of two public stakeholder meetings to gather input on the development of a recycling program which would meet the following guiding principles:

1. Should not result in taxpayers subsidizing the recycling efforts of waste generators.
2. Needs to result in an increase in recycling.

3. Needs to consider how waste reduction and recycling efforts support the reduction of greenhouse gas emissions in the City of San Diego.
4. Should help the City of San Diego maintain its position as an innovative leader on environmental issues.
5. Should try to anticipate any future state recycling goals.
6. Must be finalized three weeks prior to the September 26, 2007 NR&CC meeting.

From the suggestions and feedback received at the August 8 meeting, ESD formulated a preliminary recycling proposal which was released on August 22. Another stakeholder meeting was held on August 29 to receive feedback on the proposed program, and a proposed Ordinance (Attachment 1) was developed.

Proposed Ordinance

The proposed Recycling Ordinance incorporates both requirements which have been successful in other jurisdictions and the input of local stakeholders. It is designed to distribute the responsibility for waste reduction and recycling to all sectors of the community including commercial, single and multi-family residential, and mixed use facilities. The multi-family and commercial requirements would be phased in over time starting with the largest facilities, so as to provide ample time for smaller facilities, which may face greater challenges, to develop workable recycling programs. Additionally, any commercial, multi-family residential or mixed use facility which generates less than six cubic yards per week of refuse would be exempt from the Ordinance, with the caveat that in the future the Mayor could reduce the six cubic yard threshold after a 90 day public notice.

Details of the proposed Ordinance follow.

I. PHASING

A. City of San Diego Curbside Recycling Customers

Effective 90 days after final passage of the Ordinance, single and multi-family residences which are provided with City of San Diego curbside recyclable waste collection services would be required to participate in the City curbside recycling program. This would require those residents who have blue bins to fully utilize them, and is expected to increase tonnage in the curbside recycling program. Customers who receive City refuse collection services but do not currently receive recycling collection from the City (approximately 40,000 customers) would be provided recycling containers as funds are available, and, upon receipt of such containers, would be required to participate in the City curbside recycling program.

B. Residential Facilities Serviced by Franchisees

Effective 90 days after final passage of the Ordinance single family residences which receive refuse collection services from City franchised haulers (City Franchisees) would be required to participate in a curbside recycling program either through the City Franchisee or a recyclable materials collector.

For multi-family residential facilities serviced by City Franchisees, the requirement would be phased in as follows:

- By the 90th day after final passage of the Ordinance, for multi-family complexes with 100 units or more;
- By January 1, 2009, for multi-family complexes with 50 units or more;
- By January 1, 2010, for multi-family complexes with less than 50 units.

For both single and multi-family residential facilities not currently serviced by City forces, the facility owner/operator/manager would be required to provide on-site recycling services at least twice a month to include collection of, at a minimum, plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers. These materials were identified because they have strong markets and will be easily recyclable for the long term. The owner/operator/manager would be required to provide recycling containers, recycling signage, and education to the occupants of their facilities. Occupants would be required to separate their recyclable waste from other solid waste and deposit their recyclable wastes in the recycling containers provided.

C. Commercial Facilities

For commercial facilities serviced by City Franchisees (including City buildings managed by the City of San Diego), the facility owner/operator/manager would be required to provide on-site recycling services as needed to include collection of, at a minimum, plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers, as well as other recyclable waste for which markets exist such as wood pallets, yard waste, and scrap metal. The owner/operator/manager would be required to provide recycling containers, recycling signage, and education to the occupants of their facilities. Occupants would be required to separate their recyclable waste from other solid waste and deposit their recyclable wastes in the recycling containers provided. This requirement would be phased in as follows:

- By the 90th day after final passage of the Ordinance, for commercial facilities of 20,000 square feet or more;
- By January 1, 2009, for commercial facilities of 10,000 square feet or more;
- By January 1, 2010, for commercial facilities under 10,000 square feet.

D. Mixed Use Facilities

Mixed use facilities would be required to comply with either the multi-family facility or commercial facility requirements depending upon the predominant use of the facility based on square footage. Mixed use facilities whose predominant use is residential would follow the multi-family residential facility requirements. Mixed use facilities whose predominant use is commercial would follow the commercial facility requirements.

E. Special Events Recycling

Effective 90 days after final passage of the Ordinance, special events requiring a permit from the City of San Diego would be required to provide recycling containers for aluminum cans, and

glass and plastic bottles and jars throughout the event venue and to ensure that all recyclables are collected and recycled. Events would be required to provide an equal number of refuse and recycling containers, placed next to each other throughout the event. Currently, applicants for special events are required to submit a recycling plan with their special event permit application. This Ordinance would expand on this requirement by providing these specific requirements for recycling activities.

F. Delivery of Recyclable Materials to Recycling Facility

Franchisees, recyclable materials collectors, and persons who self-haul the recyclable wastes they generate, all must deliver the recyclables they collect to a recycling facility. That facility may be located at a landfill. But, the Ordinance would prohibit the delivery of recyclable materials to a landfill for disposal.

II. REPORTING

A. Annual Reports

City Franchisees and certified recyclable materials collectors (as defined below) providing collection services to residential facilities, commercial facilities, City buildings and mixed use facilities, would be required to submit an annual report to the City to include: name and address of each facility served, responsible person at each facility, volume of refuse and recyclables service provided and frequency of collection. They would also be required to provide the total tonnage of recyclable materials collected within the City and the names of the recycling facilities to which the recyclable materials were delivered for recycling.

All residential and commercial facilities would retain the right to self-haul their refuse and recyclable materials. Facilities, including single-family developments whose solid waste is managed by an association, which self haul their recyclables or utilize a recycling collection company that is not certified by the City, would be required to report on their own behalf. Single-family homes whose solid waste is not managed by an association would not be required to provide any reports.

Confidential or proprietary information, submitted by a City Franchisee or recyclable materials collector pursuant to the Recycling Ordinance, which is clearly marked as confidential or proprietary, will be protected and treated with confidentiality to the extent permitted by law. Otherwise, the information shall be considered a public record. If such information becomes the subject of a public records request, the City will make every effort to notify the Franchisee or Recyclable Materials Collector of the request in a timely manner. It will be the Franchisee's or Recyclable Materials Collector's obligation to defend at its expense any legal challenges seeking to obtain such information.

B. Certified Recyclable Materials Collectors

For the purposes of simplifying reporting requirements for the property owners and managers and informing the public of what companies are available to provide recycling services, the City proposes to certify recyclable materials collectors who meet minimum standards set by the City.

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Certification would not be required, but would be encouraged. Certified recyclable materials collectors would be listed on the ESD website and in educational materials published by the City.

Applicants would need to provide at a minimum: name, address and phone number of the recyclable materials collector; description of recycling vehicles used; location where recycling vehicles are stored and maintained; indemnity; and proof of insurance. The applicant also will be required to comply with certain requirements such as: clearly labelling all recycling receptacles with the collector's name, phone number, and the recyclable materials accepted in the bin; providing clean, leak-proof, and rodent-proof recycling containers with tight fitting lids; keeping their recycling vehicles clean and well-maintained; and obtaining all required permits, licenses, registrations, etc. Applicants would be required to pay a cost recovery non-refundable application fee of \$130, and certifications would be required to be renewed every two years.

III. EXEMPTIONS

Multi-family residential facilities, commercial facilities, and mixed use facilities which generate six cubic yards or less per week of refuse would be exempt from the Ordinance. Based on information accessed by ESD staff from Costar real estate database and survey information, this exemption would result in most multi-family complexes with 25-30 units or less being exempt from this Ordinance and would equate to approximately 3,000 complexes or about 40,000 multi-family units. ESD provides multi-family recycling services to about 18,000 multi-family customers and so it is likely that many of the complexes that are exempt are already receiving City-provided recycling services. Private haulers have indicated that approximately 30-40% of all their customers (multi-family and businesses combined) receive six cubic yards or less of refuse services.

The Mayor would have discretion to reduce the six cubic yard threshold after 90 days public notice.

In addition to the six cubic yard exemption, at the discretion of the Director's designee, and after payment of a cost recovery administrative fee of \$130, temporary exemptions of one year may be granted to any facility based on lack of available markets for recyclable waste, lack of available space for recycling bins, alternative recycling efforts, and the amount and type of solid waste or recyclable waste generated. Acceptance or denial of these exemptions will be notified in writing and will be appealable to the ESD Director.

IV. EDUCATION AND ENFORCEMENT

The initial emphasis for enforcement of this Ordinance would focus on the provision of educational materials and recycling containers by the owner/operator/manager. While ESD would provide downloadable signage and educational materials on its website, facility owners/operators/managers would be responsible for making sure that internal recycling collection containers have appropriate signage and residents/tenants are informed about the program annually, upon move-in, and when there is any change in the program. Waste haulers and recyclable materials collectors would be required to provide signage on all recycling containers which they service.

Additionally, ESD would monitor the reports provided by franchised waste haulers and certified recyclable materials collectors to determine what facilities are not complying with the Ordinance. While education would be the initial focus of enforcement, compliance is the goal and potential penalties would be the same as those applicable to violations of other Municipal Code provisions as provided in the City's municipal code.

Conclusion

While significant diversion has resulted from voluntary efforts to increase waste diversion in the commercial, multi-family, and single family sectors, many recyclables are still thrown away. The proposed Ordinance is needed to increase waste diversion in these sectors and has been drafted to meet the necessary waste diversion goals while being as easy as possible to implement for the facilities being affected.

FISCAL CONSIDERATIONS:

Fiscal Impact

ESD's Business Process Reengineering (BPR) efforts resulted in an annual estimated savings of \$3M in the Recycling Fund and Refuse Disposal Fund, exclusive of the Collection Services Division. While this process resulted in increased efficiency in ESD, new programs such as this Recycling Ordinance, require a reassessment of the staffing needs and revenues to maintain an appropriate level of solid waste system financing.

To manage the administrative, educational, and enforcement aspects of the Recycling Ordinance, ESD would be required to hire 3.50 full time equivalents (FTEs) including two Recycling Specialist IIs, one Code Compliance Officer and 0.50 Administrative Aide II. The two Recycling Specialists would manage the certification of recyclables collectors, the educational aspects of the Ordinance, exemption processing, and technical assistance to facilities setting up or improving their recycling programs. The one Code Compliance Officer would inspect both residential and commercial facilities to verify compliance with the Ordinance as well as respond to complaints about non-compliance. The 0.50 Administrative Aide would assist with administrative duties related to the Ordinance. The cost associated with these positions is estimated to be \$300,000 annually, and staff would be hired in April 2008.

Other costs to ESD would include the need for additional recycling collection trucks, blue recycling containers, and drivers in the Collection Services Division to handle the increased recycling tonnage from customers already serviced by ESD. Costs for these expenditures are difficult to quantify because they will depend on the level of participation by single family customers, but estimates range from \$500,000 to \$2.5M annually. Additionally, customers who have declined service in the past may request a recycling container. These customers would be added to a list and added to the program as revenues became available.

Costs to City facilities to comply with the Ordinance are difficult to precisely quantify. Generally, two cost categories exist for these facilities: custodial, and refuse and recycling collection costs. From consultations with City facilities managers, past experiences in City buildings and current practices in the private sector, it is estimated that adding recycling programs would not increase custodial costs. From consultations with local custodial companies, it has been determined that recycling programs are most cost-effective if facilities utilize a

recycling program in which staff empty their own desk-side recycling bins into centrally located bins (for example next to a copier machine) that are then emptied by the custodial staff. Most City facility recycling programs operate in this manner as do many private sector recycling programs. Since increased staff time for the custodians would be negligible, custodial costs to add recycling programs would also be negligible.

Overall, refuse and recycling collection costs for all facilities would likely increase initially and level off or even decrease after the first year. An initial expenditure would be required to purchase both desk-side and centrally located recycling bins. Additionally, recycling collection containers (dumpsters in most instances) would need to be sited and collected by a designated recyclables collector. However, since dumpster pick-ups for recycling containers are generally one-half to two thirds (1/2 - 2/3) of the cost of refuse pick-ups, once appropriate service levels are established for recycling and refuse service, fewer refuse pick-ups would be needed. This would result in total costs being equal to or less than the costs for refuse collection only.

When fully implemented (FY 2011) this program is expected to divert 100,000 tons of material from being disposed in regional landfills, including 70,000 tons of material expected to be diverted from Miramar Landfill. At that time, the diversion is anticipated to result in an annual fiscal impact to the City of \$4.4M, consisting of \$700,000 in increased costs and lost revenues to the General Fund, \$2M in increased costs and lost revenues to the Recycling Fund and \$1.7M in deferred Refuse Disposal Fund revenues. See Attachment 2 for a summary of the fiscal impacts of this Ordinance to the City by fiscal year expressed as ranges. FY 2008, 2009 and 2010 fiscal impacts increase from year to year because of the increasing estimated diverted tonnage in conjunction with the phasing in of the Ordinance requirements.

Given that recycling and refuse collection services are provided in a competitive market in San Diego, costs to commercial and multi-family facilities would range from an overall cost savings to, in some cases, an increase in costs. As described for City facilities, there are two aspects to the overall cost: the custodial services and the refuse and recycling collection costs. The same discussion above regarding the nexus between custodial service costs and program design would apply for all commercial buildings, regardless of size. Surveys by ESD staff of charges for recycling in commercial and multifamily facilities show a wide range. Typically, most commercial buildings can expect to receive recycling at no additional cost if they receive more than six cubic yards of refuse collection service per week if the standard dumpsters are used and the site is easily accessible. If the site footprint is very constrained and containers similar to those used in the City's recycling program are used, costs will likely be higher in many cases. Surveys indicate that the same cost dynamic seen for commercial buildings applies to multifamily complexes that receive nine to twelve cubic yards of refuse service. Large complexes should see cost savings and smaller complexes that add recycling might in some cases see an increase in costs.

Fiscal Mitigation

There will be minimal fiscal impact to the General Fund for FY 2008 and the estimated FY 2009 impact is \$340,000. The FY 2008 and FY 2009 fiscal impacts to the Refuse Disposal and Recycling Enterprise Funds will be absorbed within currently appropriated funds, except for additional personnel expenses, which will be partially offset by cost recovery fees charged for exemptions and certification applications. The Department will bring forward recommended

mitigation options in mid FY 2009 for FY 2010 and beyond after assessing the success and needs of the City's Recycling Ordinance.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Requiring recycling in the multi-family and commercial sectors had been discussed at the NR&CC in 1999. In 2004, mandatory recycling was discussed in an informational report (04-175) to the NR&CC. In June and July of 2007, reports on mandatory recycling were presented to the NR&CC by the City Attorney's Office.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community participation and public outreach efforts on the topics of multi-family and commercial recycling has been extensive and ongoing since the early 1990's. ESD has undertaken both formal and informal programs including Plan 2000, the City Manager's Committee on Waste Reduction and targeted outreach and technical assistance to different community sectors including office buildings, hotels, restaurants and multi-family complexes.

As mentioned in the Discussion section of this report, two public stakeholder meetings were held on August 8 and August 29, 2007 with the purpose of involving the community stakeholders in the development of this Ordinance. Additionally, staff have met and consulted with any stakeholder providing feedback or asking questions.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders associated with this item include the City's Non-Exclusive Franchised Solid Waste Haulers, San Diego County Disposal Association, San Diego Regional Chamber of Commerce, Building Owners and Manager's Association of San Diego, San Diego County Taxpayers Association, San Diego Food and Beverage Association, San Diego County Apartment Association, California Restaurant Association, California Resource Recovery Association, San Diego County Integrated Waste Management Citizens Advisory Committee, Sierra Club, San Diego EarthWorks, recyclers and individual residents. The implementation of the Ordinance would extend the life of the Miramar Landfill and assist the City in maintaining AB 939 waste diversion mandates.



Elmer L. Heap, Jr.
Environmental Services Department



R.F. Haas
Deputy Chief/ Public Works

- Attachments: 1. Proposed Recycling Ordinance
2. Fiscal Impacts of proposed Recycling Ordinance



NR&C SEP 26 2007 #6

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THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: September 17, 2007 REPORT NO: 07-148

ATTENTION: Natural Resources and Culture Committee
Agenda of September 26, 2007

SUBJECT: City Recycling Ordinance

REFERENCE: Manager's Report No. 94-191 (July 7, 1994)
Manager's Report No. 95-91 (April 26, 1995)
Manager's Report No. 96-117 (May 28, 1996)
Manager's Report No. 98-61 (March 20, 1998)
Manager's Report No. 99-160 (July 28, 1999)
Manager's Report No. 04-175 (July 28, 2004)

REQUESTED ACTION:

Approve the proposed Recycling Ordinance (Ordinance) as prepared by the City Attorney to require recycling of recyclable materials generated by residential, commercial, and mixed use facilities, as well as at special events within the City.

STAFF RECOMMENDATION:

Approve the requested action.

SUMMARY:

The California Integrated Waste Management Act of 1989 (AB939) required all cities to achieve a 50% waste diversion rate from landfill disposal by 2000 and to maintain that diversion rate on an ongoing basis. While the City's calendar year (CY) 2005 diversion rate was 52%, there are still substantial quantities of recyclable materials being unnecessarily disposed of in the region's landfills. With the Miramar Landfill expected to close in 2012 at current levels of waste disposal, the Mayor is taking action to reduce the flow of waste to landfills, increase recycling, and extend the life of the Miramar Landfill.

The Mayor recently brought forward proposed changes to the Municipal Code to trigger an ordinance passed by City Council in October 2005 to reduce the amount of construction and demolition (C&D) waste entering local landfills. The Recycling Ordinance proposed in this report addresses a different part of the waste stream, namely household and business recyclables such as paper, cardboard, glass and metal containers, and plastic bottles and jars that are entering local landfills. Waste composition studies show that over 400,000 tons of these types of

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recycling rate disposed from the City every year. ESD estimates that approximately 100,000 tons of waste could be diverted annually through this Recycling Ordinance, thus increasing the City's waste diversion rate by 2.5%.

Background

The Environmental Services Department (ESD) has identified increased commercial and multi-family waste reduction as an essential part of our integrated recycling program since the early 1990's. Since that time numerous recommendations have been made on how to address these waste streams. These include the Plan 2000 recommendations in 1994 to mandate recycling by 1999 and the August 1999 City Manager's Committee on Waste Reduction recommendations that the City implement an office paper landfill ban for buildings 20,000 square feet and larger, and that the City evaluate the feasibility of implementing a multi-family recycling program if funding is available.

Also in 1999, the Zero Based Management Review (ZBMR) recommended that the City implement a program for increasing commercial recycling, and on May 3, 2005, the San Diego County Grand Jury (2004-2005) released a report recommending San Diego convert to a mandatory recycling program. However, the City has continued to rely on voluntary efforts to encourage recycling and increase diversion in the business, multi-family, and single family sectors.

Discussion

While it is noteworthy to have achieved and maintained a diversion rate above 50% for 2004 and 2005, the variability in the City's past diversion rates serves as a reminder that we cannot necessarily expect the current 2% cushion to continue in future years. Based on the importance of extending the life of the Miramar Landfill, reducing greenhouse gas emissions, maintaining the required 50% diversion, and preparing for future legislation that may require greater diversion, the Mayor is proposing this Recycling Ordinance to address the waste generated by the commercial (including City buildings), multi-family, and single family sectors, as well as special events.

On August 8, 2007 the Mayor's Office hosted the first of two public stakeholder meetings to gather input on the development of a recycling program which would meet the following guiding principles:

1. Should not result in taxpayers subsidizing the recycling efforts of waste generators.
2. Needs to result in an increase in recycling.
3. Needs to consider how waste reduction and recycling efforts support the reduction of greenhouse gas emissions in the City of San Diego.
4. Should help the City of San Diego maintain its position as an innovative leader on environmental issues.
5. Should try to anticipate any future state recycling goals.
6. Must be finalized three weeks prior to the September 26, 2007 NR&CC meeting.

From the suggestions and feedback received at the August 8 meeting, ESD formulated a preliminary recycling proposal which was released on August 22. Another stakeholder meeting was held on August 29 to receive feedback on the proposed program, and a proposed Ordinance (Attachment 1) was developed.

Proposed Ordinance

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Details of the proposed Ordinance follow.

I. PHASING

A. City of San Diego Curbside Recycling Customers

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B. Residential Facilities Serviced by Franchisees

Effective 90 days after final passage of the Ordinance single family residences which receive refuse collection services from City franchised haulers (City Franchisees) would be required to participate in a curbside recycling program either through the City Franchisee or a recyclable materials collector.

For multi-family residential facilities serviced by City Franchisees, the requirement would be phased in as follows:

- By the 90th day after final passage of the Ordinance, for multi-family complexes with 100 units or more;
- By January 1, 2009, for multi-family complexes with 50 units or more;
- By January 1, 2010, for multi-family complexes with less than 50 units.

For both single and multi-family residential facilities not currently serviced by City forces, the facility owner/operator/manager would be required to provide on-site recycling services at least twice a month to include collection of, at a minimum, plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers. These materials were identified because they

have strong markets and will be easily recyclable for the long term. The owner/operator/manager would be required to provide recycling containers, recycling signage, and education to the occupants of their facilities. Occupants would be required to separate their recyclable waste from other solid waste and deposit their recyclable wastes in the recycling containers provided.

C. Commercial Facilities

For commercial facilities serviced by City Franchisees (including City buildings managed by the City of San Diego), the facility owner/operator/manager would be required to provide on-site recycling services as needed to include collection of, at a minimum, plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers, as well as other recyclable waste for which markets exist such as wood pallets, yard waste, and scrap metal. The owner/operator/manager would be required to provide recycling containers, recycling signage, and education to the occupants of their facilities. Occupants would be required to separate their recyclable waste from other solid waste and deposit their recyclable wastes in the recycling containers provided. This requirement would be phased in as follows:

- By the 90th day after final passage of the Ordinance, for commercial facilities of 20,000 square feet or more;
- By January 1, 2009, for commercial facilities of 10,000 square feet or more;
- By January 1, 2010, for commercial facilities under 10,000 square feet.

D. Mixed Use Facilities

Mixed use facilities would be required to comply with either the multi-family facility or commercial facility requirements depending upon the predominant use of the facility based on square footage. Mixed use facilities whose predominant use is residential would follow the multi-family residential facility requirements. Mixed use facilities whose predominant use is commercial would follow the commercial facility requirements.

E. Special Events Recycling

Effective 90 days after final passage of the Ordinance, special events requiring a permit from the City of San Diego would be required to provide recycling containers for aluminum cans, and glass and plastic bottles and jars throughout the event venue and to ensure that all recyclables are collected and recycled. Events would be required to provide an equal number of refuse and recycling containers, placed next to each other throughout the event. Currently, applicants for special events are required to submit a recycling plan with their special event permit application. This Ordinance would expand on this requirement by providing these specific requirements for recycling activities.

F. Delivery of Recyclable Materials to Recycling Facility

Franchisees, recyclable materials collectors, and persons who self-haul the recyclable wastes they generate, all must deliver the recyclables they collect to a recycling facility. That facility

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may be located at a landfill. But, the Ordinance would prohibit the delivery of recyclable materials to a landfill for disposal.

II. REPORTING

A. Annual Reports

City Franchisees and certified recyclable materials collectors (as defined below) providing collection services to residential facilities, commercial facilities, City buildings and mixed use facilities, would be required to submit an annual report to the City to include: name and address of each facility served, responsible person at each facility, volume of refuse and recyclables service provided and frequency of collection. They would also be required to provide the total tonnage of recyclable materials collected within the City and the names of the recycling facilities to which the recyclable materials were delivered for recycling.

All residential and commercial facilities would retain the right to self-haul their refuse and recyclable materials. Facilities, including single-family developments whose solid waste is managed by an association, which self haul their recyclables or utilize a recycling collection company that is not certified by the City, would be required to report on their own behalf. Single-family homes whose solid waste is not managed by an association would not be required to provide any reports.

Confidential or proprietary information, submitted by a City Franchisee or recyclable materials collector pursuant to the Recycling Ordinance, which is clearly marked as confidential or proprietary, will be protected and treated with confidentiality to the extent permitted by law. Otherwise, the information shall be considered a public record. If such information becomes the subject of a public records request, the City will make every effort to notify the Franchisee or Recyclable Materials Collector of the request in a timely manner. It will be the Franchisee's or Recyclable Materials Collector's obligation to defend at its expense any legal challenges seeking to obtain such information.

B. Certified Recyclable Materials Collectors

For the purposes of simplifying reporting requirements for the property owners and managers and informing the public of what companies are available to provide recycling services, the City proposes to certify recyclable materials collectors who meet minimum standards set by the City. Certification would not be required, but would be encouraged. Certified recyclable materials collectors would be listed on the ESD website and in educational materials published by the City.

Applicants would need to provide at a minimum: name, address and phone number of the recyclable materials collector; description of recycling vehicles used; location where recycling vehicles are stored and maintained; indemnity; and proof of insurance. The applicant also will be required to comply with certain requirements such as: clearly labelling all recycling receptacles with the collector's name, phone number, and the recyclable materials accepted in the bin; providing clean, leak-proof, and rodent-proof recycling containers with tight fitting lids; keeping their recycling vehicles clean and well-maintained; and obtaining all required permits, licenses,

registrations, etc. Applicants would be required to pay a non-refundable application fee of \$130, and certifications would be required to be renewed every two years.

III. EXEMPTIONS

Multi-family residential facilities, commercial facilities, and mixed use facilities which generate six cubic yards or less per week of refuse would be exempt from the Ordinance. Based on information accessed by ESD staff from Costar real estate database and survey information, this exemption would result in most multi-family complexes with 25-30 units or less being exempt from this Ordinance and would equate to approximately 3,000 complexes or about 40,000 multi-family units. ESD provides multi-family recycling services to about 18,000 multi-family customers and so it is likely that many of the complexes that are exempt are already receiving City-provided recycling services. Private haulers have indicated that approximately 30-40% of all their customers (multi-family and businesses combined) receive six cubic yards or less of refuse services.

The Mayor would have discretion to reduce the six cubic yard threshold after 90 days public notice.

In addition to the six cubic yard exemption, at the discretion of the Director's designee, and after payment of an administrative fee of \$130, temporary exemptions of one year may be granted to any facility based on lack of available markets for recyclable waste, lack of available space for recycling bins, alternative recycling efforts, and the amount and type of solid waste or recyclable waste generated. Acceptance or denial of these exemptions will be notified in writing and will be appealable to the ESD Director.

IV. EDUCATION AND ENFORCEMENT

The initial emphasis for enforcement of this Ordinance would focus on the provision of educational materials and recycling containers by the owner/operator/manager. While ESD would provide downloadable signage and educational materials on its website, facility owners/operators/managers would be responsible for making sure that internal recycling collection containers have appropriate signage and residents/tenants are informed about the program annually, upon move-in, and when there is any change in the program. Waste haulers and recyclable materials collectors would be required to provide signage on all recycling containers which they service.

Additionally, ESD would monitor the reports provided by franchised waste haulers and certified recyclable materials collectors to determine what facilities are not complying with the Ordinance. While education would be the initial focus of enforcement, compliance is the goal and potential penalties would be the same as those applicable to violations of other Municipal Code provisions as provided in the City's municipal code.

Conclusion

While significant diversion has resulted from voluntary efforts to increase waste diversion in the commercial, multi-family, and single family sectors, many recyclables are still thrown away. The proposed Ordinance is needed to increase waste diversion in these sectors and has been

drafted to meet the necessary waste diversion goals while being as easy as possible to implement for the facilities being affected.

FISCAL CONSIDERATIONS:

Fiscal Impact

ESD's Business Process Reengineering (BPR) efforts resulted in an annual estimated savings of \$3M exclusive of the Collection Services Division. While this process resulted in increased efficiency in ESD, new programs such as this Recycling Ordinance, require a reassessment of the staffing needs and revenues to maintain an appropriate level of solid waste system financing.

To manage the administrative, educational, and enforcement aspects of the Recycling Ordinance, ESD would be required to hire 3.50 full time equivalents (FTEs) including two Recycling Specialist IIs, one Code Compliance Officer and 0.50 Administrative Aide II. The two Recycling Specialists would manage the certification of recyclables collectors, the educational aspects of the Ordinance, exemption processing, and technical assistance to facilities setting up or improving their recycling programs. The one Code Compliance Officer would inspect both residential and commercial facilities to verify compliance with the Ordinance as well as respond to complaints about non-compliance. The 0.50 Administrative Aide would assist with administrative duties related to the Ordinance. The cost associated with these positions is estimated to be \$300,000 annually, and staff would be hired in April 2008.

Other costs to ESD would include the need for additional recycling collection trucks, blue recycling containers, and drivers in the Collection Services Division to handle the increased recycling tonnage from single-family customers already serviced by ESD. Costs for these expenditures are difficult to quantify because they will depend on the level of participation by single family customers, but estimates range from \$500,000 to \$2.5M annually. Additionally, customers who have declined service in the past may request a recycling container. These customers would be added to a list and added to the program as revenues became available.

Costs to City facilities to comply with the Ordinance are difficult to precisely quantify. Generally, two cost categories exist for these facilities: custodial, and refuse and recycling collection costs. From consultations with City facilities managers, past experiences in City buildings and current practices in the private sector, it is estimated that adding recycling programs would not increase custodial costs. From consultations with local custodial companies, it has been determined that recycling programs are most cost-effective if facilities utilize a recycling program in which staff empty their own desk-side recycling bins into centrally located bins (for example next to a copier machine) that are then emptied by the custodial staff. Most City facility recycling programs operate in this manner as do many private sector recycling programs. Since increased staff time for the custodians would be negligible, custodial costs to add recycling programs would also be negligible.

Overall, refuse and recycling collection costs for all facilities would likely increase initially and level off or even decrease after the first year. An initial expenditure would be required to purchase both desk-side and centrally located recycling bins. Additionally, recycling collection containers (dumpsters in most instances) would need to be sited and collected by a designated recyclables collector. However, since dumpster pick-ups for recycling containers are generally

one-half to two thirds (1/2 -2/3) of the cost of refuse pick-ups, once appropriate service levels are established for recycling and refuse service, fewer refuse pick-ups would be needed. This would result in total costs being equal to or less than the costs for refuse collection only.

When fully implemented this program is expected to divert 100,000 tons of material from being disposed in regional landfills, including 70,000 tons of material expected to be diverted from Miramar Landfill. The diversion is anticipated to result in an annual fiscal impact to the City of \$4.4M, consisting of \$700,000 in increased costs and lost revenues to the General Fund, \$2M in increased costs and lost revenues to the Recycling Fund and \$1.7M in deferred Refuse Disposal Fund revenues. See Attachment 2 for a summary of the fiscal impacts of this Ordinance to the City by fiscal year. FY 2008, 2009 and 2010 fiscal impacts increase from year to year because of the increasing estimated diverted tonnage in conjunction with the phasing in of the Ordinance requirements.

Given that recycling and refuse collection services are provided in a competitive market in San Diego, costs to commercial and multi-family facilities would range from an overall cost savings to, in some cases, an increase in costs. As described for City facilities, there are two aspects to the overall cost: the custodial services and the refuse and recycling collection costs. The same discussion above regarding the nexus between custodial service costs and program design would apply for all commercial buildings, regardless of size. Surveys by ESD staff of charges for recycling in commercial and multifamily facilities show a wide range. Typically, most commercial buildings can expect to receive recycling at no additional cost if they receive more than six cubic yards of refuse collection service per week if the standard dumpsters are used and the site is easily accessible. If the site footprint is very constrained and containers similar to those used in the City's recycling program are used, costs will likely be higher in many cases. Surveys indicate that the same cost dynamic seen for commercial buildings applies to multifamily complexes that receive nine to twelve cubic yards of refuse service. Large complexes should see cost savings and smaller complexes that add recycling might in some cases see an increase in costs.

Fiscal Mitigation

The annual fiscal impact to the General Fund would be mitigated by the revenues generated from the Refuse Container Replacement Fee proposed as a mitigation for the C&D Debris Diversion Ordinance. This fee is anticipated to generate an estimated \$1.5M in FY 2008 and 2009 combined. The C&D Debris Diversion Ordinance is anticipated to have a fiscal impact of \$300,000 in FY 2008 and FY 2009. Based on the above, there should be more than sufficient revenues generated by the Refuse Container Replacement Fee to mitigate both the C&D Debris Diversion Ordinance and the City's Recycling Ordinance.

The FY 2008 and FY 2009 fiscal impacts to the Refuse Disposal and Recycling Enterprise Funds will be absorbed by the respective fund balances. Current projections suggest that there is enough funding available with the mitigations noted above to cover the proposed City Recycling Ordinance for FY 2008 and FY 2009. The Department will bring forward recommended mitigation options for FY 2010 and beyond in mid FY 2009 after assessing the success and needs of the City's Recycling Ordinance.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Requiring recycling in the multi-family and commercial sectors had been discussed at the NR&CC in 1999. In 2004, mandatory recycling was discussed in an informational report (04-175) to the NR&CC. In June and July of 2007, reports on mandatory recycling were presented to the NR&CC by the City Attorney's Office.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community participation and public outreach efforts on the topics of multi-family and commercial recycling has been extensive and ongoing since the early 1990's. ESD has undertaken both formal and informal programs including Plan 2000, the City Manager's Committee on Waste Reduction and targeted outreach and technical assistance to different community sectors including office buildings, hotels, restaurants and multi-family complexes.

As mentioned in the Discussion section of this report, two public stakeholder meetings were held on August 8 and August 29, 2007 with the purpose of involving the community stakeholders in the development of this Ordinance. Additionally, staff have met and consulted with any stakeholder providing feedback or asking questions.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders associated with this item include the City's Non-Exclusive Franchised Solid Waste Haulers, San Diego County Disposal Association, San Diego Regional Chamber of Commerce, Building Owners and Manager's Association of San Diego, San Diego County Taxpayers Association, San Diego Food and Beverage Association, San Diego County Apartment Association, California Restaurant Association, California Resource Recovery Association, San Diego County Integrated Waste Management Citizens Advisory Committee, Sierra Club, San Diego EarthWorks, recyclers and individual residents. The implementation of the Ordinance would extend the life of the Miramar Landfill and assist the City in maintaining AB 939 waste diversion mandates.



Elmer L. Heap, Jr.
Environmental Services Department



R.F. Haas
Deputy Chief/ Public Works

- Attachments: 1. Proposed Recycling Ordinance
2. Fiscal Impacts of proposed Recycling Ordinance

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REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 51
11/13
3. DATE: 10/8/2007

TO: ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): ENVIRONMENTAL SERVICES DEPARTMENT

4. SUBJECT: City Recycling Ordinance

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) Kip Sturdevan, 858-573-1214, MS 1103-B

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.) Stephen Grealy, 858-573-1275, MS 1103-B

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND			
DEPT.			
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT			

9. ADDITIONAL INFORMATION / ESTIMATED COST:
The estimated FY08 fiscal impact will not result in revised appropriations to expenditures or revenues. Future fiscal years will be addressed in the budget process.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/8/07	6	DEPUTY CHIEF	<i>[Signature]</i>	10-17-07
2	EAS	<i>[Signature]</i>	10/9/07	7	COO	<i>[Signature]</i>	10-17-07
3	LIAISON OFFICE	<i>[Signature]</i>	10/10/07	8	CITY ATTORNEY	<i>[Signature]</i>	10-17-07
4	FM	<i>[Signature]</i>	10/15/07	9	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10-17-07
5	AUDITOR'S	<i>[Signature]</i>	10/16/07	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON: <i>[Signature]</i> <input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <i>MS</i> <input type="checkbox"/> REFER TO: COUNCIL DATE: 10/30/07			

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Adopt an ordinance amending Chapter 6, Article 6 of the San Diego Municipal Code by adding Division 7, Sections 66.0701 - 66.0718 all relating to recycling for residential facilities, commercial facilities, mixed use facilities, and special events.
2. Authorize the Mayor to establish cost recovery fees for processing applications for exemptions from the recycling requirements and for applications to become a Certified Recyclable Materials Collector, and directing that these fees be filed in the Ratebook of City Fees and Charges in the Office of the City Clerk.
3. Find that the new application filing fees described above are for the purposes of meeting operational expenses associated with implementing and enforcing the requirements of the Ordinance.

11A. STAFF RECOMMENDATIONS: Adopt the Recycling Ordinance as prepared by the City Attorney to require recycling of recyclable materials generated by residential, commercial, and mixed use facilities, as well as at special events within the City; authorize the Mayor to establish the application processing fees; and find that such fees are for the purpose of meeting operational expenses associated with implementing and enforcing the Recycling Ordinance.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): ALL

ENVIRONMENTAL IMPACT: The activity to adopt an ordinance is not a "project" and therefore not subject to CEQA pursuant to the State Guidelines Section 15060(C)(3). This determination is predicated on Section 15004 of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review. Implementation of the future projects will require further environmental review under the provisions of CEQA. The proposed fees are operating expenses and therefore statutorily exempt pursuant to CEQA guideline 15273(a)(1).

HOUSING IMPACT: N/A

OTHER ISSUES:

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EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: October 24, 2007 REPORT NO: 07-166
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Environmental Services
SUBJECT: City Recycling Ordinance
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER: Kip Sturdevan, (858) 573-1214

REQUESTED ACTION: Approve the proposed City Recycling Ordinance (Ordinance) and authorize the Mayor to establish cost recovery processing fees for applications for exemptions and applications for Recyclable Materials Collector certification.

STAFF RECOMMENDATION: Approve the requested actions.

EXECUTIVE SUMMARY: The proposed Ordinance addresses recycling for commercial (including City buildings), multi-family, and single family sectors, as well as special events. The proposed Ordinance is designed to distribute responsibility for recycling to all sectors of the community. Recycling requirements would be phased in as follows:

Single family residents

- Existing City recycling collection customers - January 1, 2008;
- Existing City refuse collection customers without recycling collection - as funding is available and containers are provided;
- Privately serviced residents - by the 90th day after final passage of the Ordinance.

Multi-family residential facilities

- 100 units or more - by the 90th day after final passage of the Ordinance;
- 50 units or more - by January 1, 2009;
- Less than 50 units - by January 1, 2010.

Commercial facilities

- 20,000 square feet or more - by the 90th day after final passage of the Ordinance;
- 10,000 square feet or more - by January 1, 2009;
- Less than 10,000 square feet - by January 1, 2010.

Mixed use facilities would comply with either the multi-family or commercial facility requirements depending upon the predominant use of the facility based on square footage. Effective 90 days after final passage of the Ordinance, special events requiring a permit from the City would be required to provide recycling containers next to each refuse container.

Facility owners/operators/managers would be responsible for providing on-site recycling services, signage for collection areas, and informing residents/tenants about the program. ESD would provide downloadable signage and educational materials on its website. Occupants of commercial, mixed-use, and multi-family residential facilities would be required to participate in the recycling program provided. Franchised haulers and Recyclable Materials Collectors would be required to provide signage on all recycling containers they service, deliver recyclable materials to recycling facilities and file annual reports with ESD so compliance can be monitored. Facilities that choose to self-haul their recyclables would also be required to file annual reports with ESD. To simplify reporting requirements and inform the public about recycling service providers, ESD proposes a voluntary certification program for recyclable materials collectors. Applicants for such a certificate would be charged a \$130 application processing fee.

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While education would be the initial focus of enforcement, compliance is the goal, and potential penalties would be the same as those for violations of other Municipal Code provisions. Multi-family residential, commercial, and mixed use facilities generating six cubic yards or less per week of refuse and recyclable materials combined would be exempt, otherwise they would be required to participate in a recycling program. In addition, temporary one-year exemptions may be granted at the discretion of the ESD Director's designee after payment of a \$130 processing fee. Notification of approval or denial of an exemption would be in writing and appealable to the ESD Director. For further detail about the proposed ordinance or its requirements please refer to Report to Council No. 07-166.

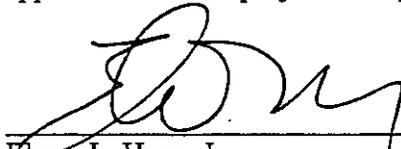
FISCAL CONSIDERATIONS: ESD would need to hire 3.50 full time equivalents at an estimated cost of \$300,000 annually to implement the Ordinance. Costs to handle increased recycling tonnage from City curbside customers are estimated at \$500,000 to \$2.5M annually. Costs to City facilities to comply with the Ordinance include an initial expenditure to purchase recycling bins and increased collection costs during the first year or two. Since recyclable collection is generally less costly than refuse collection, collection costs are expected to fall once appropriate service levels are established.

When fully implemented (FY 2011), annual fiscal impacts to the City are estimated to be \$4.0M - \$4.7M, consisting of \$400K - \$900K in increased costs and lost revenues to the General Fund (GF), \$1.3M - \$2.6M in increased costs and lost revenues to the Recycling Fund (RF), and \$1.7M in deferred Refuse Disposal Fund (RDF) revenues. The FY 2008 and FY 2009 fiscal impacts to the RF and RDF will be absorbed within the current appropriated funds, except for additional personnel expenses, which will be partially offset by cost recovery fees for exemptions and certification applications. ESD will bring forward recommended mitigation for the RF, RDF and GF in mid FY 2009 for FY 2010 and beyond, after assessing the success and needs of the Ordinance.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Requiring recycling in the multi-family and commercial sectors was discussed at the NR&CC in 1999. In 2004, recycling was discussed in an informational report (04-175) to the NR&CC. In June and July of 2007, reports on mandatory recycling were presented to the NR&CC by the City Attorney's Office. On September 26, 2007, the Recycling Ordinance was presented to the NR&CC, which voted unanimously to send the Ordinance to Council for adoption.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Two public stakeholder meetings were held (8/8/07 and 8/29/07) to involve the community in the development of this Ordinance. Staff were also responsive to many communications from individual stakeholders.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders include the City's Franchised Waste Haulers, SD County Disposal Association, SD Regional Chamber of Commerce, Building Owners and Manager's Association of SD, SD County Taxpayers Association, SD Food and Beverage Association, SD County Apartment Association, California Restaurant Association, California Resource Recovery Association, SD County Integrated Waste Management Citizens Advisory Committee, Sierra Club, SD EarthWorks, recyclers, residents, and special event permit applicants. For the projected impacts refer to the Report to Council No. 07-166 for more details.


Elmer L. Heap, Jr.
Environmental Services Department


R.F. Haas
Deputy Chief / Public Works

CITY RECYCLING ORDINANCE (CRO) Estimated Fiscal Impacts

Full Implementation

	FY 2008		FY 2009		FY 2010		FY 2011	
Estimated Diverted Tonnage	8,000		50,000		75,000		100,000	
Recycling Fund								
Additional Education & Compliance Staff	(\$75,000)		(\$300,000)		(\$300,000)		(\$300,000)	
Increased Operations Costs	(\$40,000)	(\$200,000)	(\$250,000)	(\$1,250,000)	(\$375,000)	(\$1,875,000)	(\$500,000)	(\$2,500,000)
Reduced AB939 Fee Revenue	(\$56,000)		(\$350,000)		(\$525,000)		(\$700,000)	
Increased Curbside Commodity Revenue	\$14,000	\$72,000	\$90,000	\$450,000	\$135,000	\$675,000	\$180,000	\$900,000
Subtotal	(\$157,000)	(\$259,000)	(\$810,000)	(\$1,450,000)	(\$1,065,000)	(\$2,025,000)	(\$1,320,000)	(\$2,600,000)
Refuse Disposal Fund ¹	(\$136,000)		(\$850,000)		(\$1,275,000)		(\$1,700,000)	
General Fund								
Reduced Franchise Fee Revenue	(\$80,000)		(\$500,000)		(\$750,000)		(\$1,000,000)	
Implementing Recycling at City Facilities ²	(\$6,000)		(\$35,000)		(\$53,000)		(\$70,000)	
Reduced Collections Div. Disposal Fees	\$10,000	\$53,000	\$65,000	\$330,000	\$98,000	\$495,000	\$130,000	\$660,000
Subtotal	(\$76,000)	(\$33,000)	(\$470,000)	(\$205,000)	(\$705,000)	(\$308,000)	(\$940,000)	(\$410,000)
Grand Total Fiscal Impact	(\$369,000)	(\$428,000)	(\$2,130,000)	(\$2,505,000)	(\$3,045,000)	(\$3,608,000)	(\$3,960,000)	(\$4,710,000)

¹ Fiscal impacts are deferred Miramar Landfill tipping fee revenues

² These amounts do not include anticipated savings from reduced trash collection services

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(O-2008-30)

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 7, SECTIONS 66.0701, 66.0702, 66.0703, 66.0704, 66.0705, 66.0706, 66.0707, 66.0708, 66.0709, 66.0710, 66.0711, 66.0712, 66.0713, 66.0714, 66.0715, 66.0716, 66.0717, AND 66.0718 ALL RELATING TO RECYCLING FOR RESIDENTIAL FACILITIES, COMMERCIAL FACILITIES, MIXED USE FACILITIES, AND SPECIAL EVENTS.

This ordinance establishes recycling requirements for residential facilities, commercial facilities (including City buildings), mixed use facilities, and special events within the City. These requirements are intended to increase recycling of recyclables such as plastic, glass, and metal containers; cardboard; paper; newspaper; and other recyclables otherwise destined for disposal, so as to reuse these recyclables and conserve landfill capacity.

This ordinance contains a notice that a full reading of the ordinance is dispensed with prior to passage, since a written was made available to the City Council and the public prior to the day of its passage.

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

A complete copy of this ordinance is available for inspection in the Office of the City Clerk, City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

GCL:mb
09/19/07
Or.Dept: ESD
D-2008-30

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 7, SECTIONS 66.0701, 66.0702, 66.0703, 66.0704, 66.0705, 66.0706, 66.0707, 66.0708, 66.0709, 66.0710, 66.0711, 66.0712, 66.0713, 66.0714, 66.0715, 66.0716, 66.0717, AND 66.0718 ALL RELATING TO RECYCLING FOR RESIDENTIAL FACILITIES, COMMERCIAL FACILITIES, MIXED USE FACILITIES, AND SPECIAL EVENTS.

WHEREAS, the City operates the Miramar Landfill [Landfill], which currently is the only municipal landfill in the City; and

WHEREAS, the Landfill is expected to close between 2011 and 2013; so preserving Landfill capacity in order to extend the useful life of the Landfill for the benefit of the citizens of the City is of paramount concern; and

WHEREAS, the California Integrated Waste Management Act of 1989, Assembly Bill 939 [AB 939], requires that each local jurisdiction in the State divert 50% of waste from landfill disposal; and

WHEREAS, the City could face fines up to \$10,000 per day for not maintaining at least a 50% diversion rate mandated by State law and showing good faith efforts to comply with the City's Integrated Waste Management Plan; and

WHEREAS, increasing recycling is necessary both to preserve and extend the useful life of the Landfill and to further efforts to reduce waste and comply with State mandates; and

WHEREAS, diverting waste generated from residential and commercial facilities and special events will assist the City in its efforts to maintain and exceed the State-mandated waste diversion rate; and

WHEREAS, voluntary residential and commercial recycling programs have not produced the waste diversion necessary to ensure continued compliance with state mandates; and

WHEREAS, except in unusual circumstances, it is feasible for residential and commercial facilities to accommodate recycling containers and signage and to implement recycling programs; and

WHEREAS, large volumes of recyclable materials also are generated at special events;

NOW THEREFORE,

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

Section 1. That Chapter 6, Article 6 of the San Diego Municipal Code is hereby amended by adding Division 7, sections 66.0701, 66.0702, 66.0703, 66.0704, 66.0705, 66.0706, 66.0707, 66.0708, 66.0709, 66.0710, 66.0711, 66.0712, 66.0713, 66.0714, 66.0715, 66.0716, 66.0717, and 66.0718 to read as follows:

Division 7: Recycling Ordinance

§ 66.0701 Findings

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only municipal landfill in the City. The Miramar Landfill currently is expected to close between 2011 and 2013. Preserving landfill capacity at the Miramar Landfill in order to extend the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.
- (b) The City has met (for 2004 and 2005) and continues to make progress in maintaining the waste *diversion* requirements imposed by AB 939, but

additional efforts, particularly in the *recycling* of paper, cardboard, and other *recyclable materials*, will assist the City in maintaining and exceeding the goal of *diverting* 50% of its waste from landfill *disposal*.

- (c) Studies show that approximately 21% of the waste generated in the City of San Diego and delivered for landfill *disposal* is paper and 16% is compostable organics, all of which could be *diverted* from landfill *disposal*.
- (d) Efforts by the City and the private sector to encourage voluntary *diversion* of residential, commercial, and special event waste have not been as successful as the City had hoped and additional efforts are necessary to ensure continued compliance with *AB 939* requirements.
- (e) *Recycling* programs in other jurisdictions in the State, similar to the one implemented by this Division, have proven successful in increasing *diversion* of *recyclable materials* and have been favorably received by the California Integrated Waste Management Board.

§ 66.0702 Purpose

The purpose of this Division is to establish requirements for *recycling* of *recyclable materials* generated from residential facilities (both single family and multi-family), commercial facilities (including City buildings), and special events. These requirements are intended to increase the *diversion* of *recyclable materials* from landfill *disposal*, conserve the capacity and extend the useful life of the Miramar Landfill, reduce greenhouse gas emissions, and avoid the potential financial and other consequences to the City of failing to meet *AB 939* requirements.

§ 66.0703 Definitions

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

AB 939 has the same meaning as set forth in Section 66.0102 of this Article.

Certified Recyclable Materials Collector means a *Recyclable Materials Collector* which has been issued a certificate by the City pursuant to this Division.

Collect or *Collection* shall mean to take physical possession of and remove *solid waste* or *recyclable materials* at the place of generation.

Commercial facilities means any facilities that are not *residential facilities* or *mixed use facilities*. *Commercial facilities* includes City buildings for which the *responsible person* is a City of San Diego employee.

Department means the City of San Diego Environmental Services Department or its successor.

Director has the same meaning as set forth in Section 66.0102 of this Article.

Disposal means the final deposition of waste at a permitted landfill or other permitted waste facility.

Diversion or *Divert* means the reduction or elimination of *solid waste* from landfill *disposal*.

Franchisee has the same meaning as set forth in Section 66.0102 of this Article.

Mixed use facilities means facilities which include both residential and commercial uses.

Person has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable Materials has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable Materials Collector has the same meaning as set forth in Section 66.0102 of this Article.

Recycling or *Recycle* has the same meaning as set forth in Section 66.0102 of this Article.

Recycling facility means a *recycling*, composting, or materials recovery or reuse facility.

Refuse has the same meaning as set forth in Section 66.0102 of this Article.

Residential facility has the same meaning as set forth in Section 66.0127(a)(4) of this Article.

Responsible person has the same meaning as set forth in Section 11.0210 of the San Diego Municipal Code including, but not limited to, the individual or entity responsible for the management of *solid waste* at the *residential, commercial* or *mixed use facility* or special event for *disposal* or *recycling*.

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Self-haul means the process of personally, or through one's own full-time employees, *collecting*, transporting, and delivering one's own *solid waste* or *recyclable materials*.

Solid waste has the same meaning as set forth in Section 66.0102 of this Article.

§ 66.0704 Unlawful Acts

It is unlawful for any *person* to fail to comply with any provision or requirement set forth in this Division which is applicable to such *person*.

§ 66.0705 Recycling Requirement for Persons Serviced by City of San Diego

Effective January 1, 2008, *persons* who are provided with curbside *recycling collection* services by the City of San Diego shall participate in the City curbside *recycling* program by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the approved *recycling* container.

§ 66.0706 Recycling Requirement for Residential Facilities Serviced by Franchisee

(a) Occupants of Single Family *Residential Facilities*. Effective on the 90th day after the date of final passage of the ordinance adopting this Division, occupants of single-family *residential facilities* which receive *solid waste collection* service from a *Franchisee* shall participate in a curbside *recycling* program, offered by the *Franchisee* or a *Recyclable Materials Collector*, by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the *recycling* container provided by the *Franchisee* or *Recyclable Materials Collector*.

- (b) *Single Family Residential Facilities Managed by Association.* For single family residential facilities, whose solid waste collection services are managed by an association or other organization responsible for providing for solid waste collection services to multiple single family residential facilities within a housing development, the responsible person for the association or other organization shall provide curbside recycling services to each single family residential facility in compliance with the requirements in sections 66.0706(e) and 66.0706(f), beginning on the 90th day after the date of final passage of the ordinance adopting this Division.
- (c) *Multi-Family Residential Facilities.* For multi-family residential facilities which receive solid waste collection service from a Franchisee, the responsible person shall provide on-site recycling services to occupants as required by this Division, by the following dates:
- (1) The 90th day after the date of final passage of the ordinance adopting this Division, for multi-family residential facilities with 100 residential units or more;
 - (2) January 1, 2009, for multi-family residential facilities with at least 50 but not more than 99 residential units; and
 - (3) January 1, 2010, for multi-family residential facilities with up to 49 residential units.
- (d) *Occupants of Multi-Family Residential Facilities.* Occupants of multi-family residential facilities which receive solid waste collection service from a

- (2) All new occupants shall be given information and instructions upon occupancy; and
- (3) All occupants shall be given information and instructions upon any change in *recycling* service to the facility.

§ 66.0707 Recycling Requirements for Commercial Facilities Serviced by Franchisee

- (a) *Commercial facilities.* For *commercial facilities* which receive *solid waste collection services* from a *Franchisee*, the *responsible person* shall provide on-site *recycling services* to occupants as required by this Division, by the following dates:
 - (1) The 90th day after the date of final passage of the ordinance adopting this Division, for *commercial facilities* of 20,000 square feet or more;
 - (2) January 1, 2009, for *commercial facilities* of 10,000 square feet or more, but less than 20,000 square feet; and
 - (3) January 1, 2010, for *commercial facilities* under 10,000 square feet.
- (b) *Occupants of Commercial Facilities.* Occupants of *commercial facilities* which receive *solid waste collection service* from a *Franchisee*, shall participate in a *recycling program* by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the *recycling container* provided by the *Franchisee* or *Recyclable Materials Collector*, beginning on the applicable dates specified in Section 66.0707(a).
- (c) *Recycling Services.* The *recycling services* required by this Section 66.0707 shall include, at a minimum, all of the following:

- (1) *collection of recyclable materials* as frequently as necessary to meet demand;
 - (2) *collection* of plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers;
 - (3) *collection of other recyclable materials* for which markets exist, such as scrap metal, wood pallets, and food waste, as determined by the *Director*, with *collection of such recyclable materials* required beginning on the 181st day after the City gives public notice thereof by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City and posting a notice including such *recyclable materials* on a list maintained on the *Department's* website;
 - (4) utilization of *recycling* receptacles or containers which comply with the standards in the Container and Signage Guidelines established by the *Department*;
 - (5) designated *recycling collection* and storage areas; and
 - (6) signage on all *recycling* receptacles, containers, chutes, and/or enclosures which complies with the standards described in the Container and Signage Guidelines established by the *Department*.
- (d) Occupant Education. For *commercial facilities*, the *responsible person* shall ensure that occupants are educated about the *recycling* services as follows:



- (1) Information, including the types of *recyclable materials* accepted, the location of *recycling* containers, and the occupants responsibility to *recycle* pursuant to this Division, shall be distributed to all occupants annually;
- (2) All new occupants shall be given information and instructions upon occupancy; and
- (3) All occupants shall be given information and instructions upon any change in *recycling* service to the *commercial facility*.

§ 66.0708 Recycling Requirements for Mixed Use Facilities

- (a) **Majority Residential.** For a *mixed use facility* which has the majority of its square footage devoted to residential uses, the *responsible person* shall comply with the *recycling* requirements set forth in Section 66.0706 of this Division.
- (b) **Majority Commercial.** For a *mixed use facility* which has the majority of its square footage devoted to commercial uses, the *responsible person* shall comply with the *recycling* requirements set forth in Section 66.0707 of this Division.
- (c) **Occupants of Majority Residential *Mixed Use Facility*.** Occupants of a *mixed use facility* which has the majority of its square footage devoted to residential uses, shall comply with the *recycling* requirements applicable to occupants set forth in Section 66.0706 of this Division.

- (d) Occupants of Majority Commercial *Mixed Use Facility*. Occupants of a *mixed use facility* which has the majority of its square footage devoted to commercial uses, shall comply with the *recycling* requirements applicable to occupants set forth in Section 66.0707 of this Division.

§ 66.0709 Delivery of Recyclable Materials to Recycling Facility

Franchisees and Recyclable Materials Collectors who collect *recyclable materials* generated within the City shall deliver those *recyclable materials* to a *recycling facility*. *Persons who self-haul recyclable materials* must deliver those *recyclable materials* to a *recycling facility*. The *recycling facility* may be located at a landfill, but *recyclable materials* generated within the City shall not be delivered to a landfill or other site for *disposal*.

§ 66.0710 Recycling Containers

- (a) Container Signage. Automatic lift containers, bins, roll-offs, and other containers provided by *Franchisees and Recyclable Materials Collectors* to collect and store *recyclable materials* pending collection shall be clearly identified as a *recyclable materials* container, shall display the name and phone number of the *Franchisee or Recyclable Materials Collector* to whom the container belongs, and shall display a list of the *recyclable materials* which may be deposited into the container.
- (b) Container Features. Automatic lift containers, bins, roll-offs, and other containers used to collect and store *recyclable materials* pending collection shall be equipped with close-fitting lids and be leak-proof and rodent-proof.

§ 66.0711 Annual Reports from Franchisees and Recyclable Materials Collectors

(a) *Franchisees and Certified Recyclable Materials Collectors* shall submit an annual report by August 15 of each year, beginning August 15, 2008, to the *Department*, on a form or using a format prescribed by the *Director*.

Annual reports shall include the following information for each facility serviced within the City for the period June 30 through July 1 of the immediately preceding twelve-month period:

- (1) The name of the *person(s)* responsible for *solid waste* and/or *recyclable materials* management at the facility serviced;
- (2) The name and address of the facility serviced;
- (3) The volume in cubic yards or gallons, measured by the size of the applicable containers in use at the facility, of *solid waste* and *recyclable materials* collected per week from the facility;
- (4) The frequency of *solid waste* and *recyclable materials* collection service provided to the facility; and
- (5) Additional information as required by the *Director*.

(b) *Franchisees and Recyclable Materials Collectors* also shall include in the annual reports for the time period specified in section 66.0711(a) the following information:

- (1) The total amount of *recyclable materials*, measured in tons, *collected* by the *Franchisee* or *Recyclable Materials Collector* within the City;
and

- (2) The names and addresses of the *recycling facilities* to which the *recyclable materials collected* within the City were delivered for *recycling*.

§ 66.0712 Special Events Recycling

- (a) For a community special event requiring an event permit from the City of San Diego, the *responsible person* shall provide *recycling* receptacles throughout the event venue, effective beginning on the 90th day after the date of final passage of the ordinance adopting this Division.
- (b) The number of *recycling* receptacles shall equal the number of *solid waste* receptacles.
- (c) The *solid waste* and *recycling* receptacles shall be placed next to one another throughout the event venue.
- (d) The types of *recyclable materials* suitable for deposit into each *recycling* receptacle shall include, at a minimum, aluminum and metal cans, and glass and plastic bottles and jars.
- (e) Each *recycling* receptacle shall be clearly identified as a *recycling* receptacle and shall display a list of the types of *recyclable materials* which may be deposited into the *recycling* receptacle.
- (f) The *responsible person* shall ensure that the *recyclable materials* deposited into the *recycling* receptacles are delivered to a *recycling facility*. The *recycling facility* may be located at a landfill, but *recyclable materials* shall not be delivered to a landfill for *disposal*.

§ 66.0713 Exemptions

- (a) Six cubic yard exemption. *Multi-family residential facilities, commercial facilities, and mixed use facilities* which generate 6 cubic yards or less per week of *solid waste*, including *recyclable materials* mixed with *solid waste*, are exempt from the requirements of this Division. The 6 cubic yard threshold may be decreased at the discretion of the City Manager effective 90 days after the City has notified the public thereof by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City and posting a notice on the *Department's* website.
- (b) Other Exemptions. Other exemptions to some or all of the requirements of this Division may be granted at the discretion of the *Director's* designee. Applications for exemptions may be granted upon consideration of the following factors: available markets for *recyclable materials*, available space for *recycling* containers, alternative *recycling* efforts, and the amount and type of *solid waste* or *recyclable materials* generated. To be effective, an exemption must be in writing and signed by the *Director's* designee. An exemption may be revoked at any time at the discretion of the *Director's* designee if one or more of the factors justifying the exemption no longer exist, or other change in circumstances warrant revocation. Unless earlier revoked, an exemption shall be effective for a period of one year from the date it was granted. Subsequent applications for exemptions may be granted at the discretion of the *Director's* designee upon consideration of the factors listed in this section 66.0713(b).

- (c) Application for Exemption. Applications for an exemption shall be submitted to the *Department* in writing, on a form approved by the *Director*, together with a cost-recovery processing fee. The processing fee shall be reviewed annually by the City Manager and adjusted accordingly to ensure full cost-recovery for processing the application for exemption.
- (d) If the *Director's* designee denies an application for an exemption, the *Director's* designee shall notify the applicant in writing of the reasons for the denial. The denial of an application for an exemption or the revocation of an exemption may be appealed to the *Director*, whose decision shall be final.

§ 66.0714 **Certified Recyclable Materials Collector**

- (a) *Certified Recyclables 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*. 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) Application Form and Fee. Applicants for a *recyclable materials collector* certificate shall complete and submit to the *Director* a written application, on a form approved by the *Director*, together with a cost-recovery processing fee. The processing fee shall be reviewed annually by the City Manager and adjusted accordingly to ensure full cost-recovery for processing the

application for certification. The application shall include, at a minimum, all of the following:

- (1) name, address, and telephone number of the applicant;
- (2) name, address, and telephone number of an individual contact for the applicant;
- (3) description of each vehicle the applicant will use to provide *recyclable materials collection* services within the City including, but not limited to make, model, serial or vehicle identification number, and license number;
- (4) address where all vehicles and operating equipment used to provide *recyclable materials collection* services within the City will be stored and maintained;
- (5) the applicant's agreement 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 the applicant, or its agents, officers or employees, in the performance of the *recyclable materials collection* services, and all costs and expenses of investigating and defending against same; provided, however, that the applicant'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;
- (6) without limiting the indemnification obligation above, the applicant's agreement to obtain and maintain in full force and effect throughout the term of the *recyclable materials collector* certificate, and any extensions or modifications thereof, insurance coverage which meets or exceeds the requirements established by the *Director*; and
- (7) A written statement certifying that the applicant has reviewed and will comply with the requirements of this Division and in the certificate.
- (c) Insurance. The *Director*, in consultation with the City's Risk Management Department, shall establish minimum reasonable insurance requirements for *Certified Recyclable Materials Collectors*. Simultaneously with the submittal of its application, the applicant shall furnish proof satisfactory to the *Director* that the applicant has obtained the required insurance coverage. Annually on each anniversary of the issuance of the certificate, the applicant shall furnish proof satisfactory to the *Director* that the applicant maintains at least the minimum required insurance coverage.
- (d) Vehicles and Equipment. All vehicles, containers, and other equipment used to provide the *recyclable materials collection* services shall be kept in a clean and well-maintained condition.
- (e) Container Signage. Automatic lift containers, bins, roll-offs, and other containers used to *collect* and store *recyclable materials* pending *collection*

shall be clearly identified as a *recyclable materials* container, shall display the name and phone number of the *Certified Recyclable Materials Collector* to whom the container belongs, and shall display a list of the *recyclable materials* which may be deposited into the container.

- (f) **Container Features.** Automatic lift containers, bins, roll-offs, and other containers used to *collect* and store *recyclable materials* pending *collection* shall be equipped with close-fitting lids and be leak-proof and rodent-proof.
- (g) **Compliance with Law.** *Certified Recyclable Materials Collectors* shall conduct all of their activities in compliance with all applicable federal, state, and local laws, regulations, ordinances, and requirements and shall be responsible for obtaining all applicable permits, licenses, certifications, and registrations.
- (h) **Application Verification.** The *Director* may independently verify any and all statements made or implied in the application or any accompanying documents. The *Director* may also request clarification from the applicant of any such statements or information.
- (i) **Application Review.** In reviewing each application, the *Director* shall take into consideration all components of the application including, but not limited to:
 - (1) the ability of the applicant to meet the requirements of this Division and the certificate;

- (2) any history of criminal or civil violations that may compromise the public's interest; and
- (3) the completeness, accuracy, and validity of the application.

- (j) Application Determination. After a reasonable review period, the *Director* shall grant or deny the application. If the *Director* fails to grant an application after thirty days from the receipt of a complete application, including accompanying documentation, the applicant may at the applicant's option deem the application denied. If the *Director* denies an application, the *Director* shall notify the applicant in writing of the reasons for the denial.

- (k) Certificate Revocation. The *Director* may revoke a certificate if the *Director* determines, after providing notice and an opportunity for a hearing, that a *Certified Recyclable Materials Collector* has violated the provisions in the certificate or any applicable law. If the *Director* revokes a certificate, the *Director* shall notify the applicant in writing of the reasons for the revocation.

- (l) Appeal Upon Denial of Application or Revocation of Certificate. Within thirty days after the issuance of a written notice of the denial of an application or the revocation of a certificate, the applicant or *Certified Recyclable Materials Collector* may request in writing to the *Director* that the City Manager review the *Director's* decision. Within thirty days of the Department's receipt of such a request, a meeting with the City Manager or designee shall be scheduled to review the items cited in the written notice. At that meeting, the applicant or *Certified Recyclable Materials Collector* may provide any additional

information in support of their position. Within thirty days of such a meeting, the City Manager will issue a written decision on the application or revocation, which shall include the reasons for the decision. The City Manager's decision shall be final. A copy of the City Manager's written decision shall be provided to the applicant or *Certified Recyclable Materials Collector* and the *Director*.

§ 66.0715 Self-Haul and Use of Non-Certified Recyclable Materials Collector

- (a) Nothing in this Division shall preclude any *person* from *self-hauling recyclable materials* generated by that *person* to a *recycling* facility.
- (b) The *responsible person* for a multi-family *residential facility*, *commercial facility*, *mixed use facility*, or association or organization described in section 66.0706(b), which *self-hauls solid waste* to a *disposal* facility shall comply with the *recycling* requirements in this Division applicable to that multi-family *residential facility*, *commercial facility*, *mixed use facility*, or association or organization described in section 66.0706(b).
- (c) Except for occupants of single family *residential facilities*, a *person* who *self-hauls solid waste* to a *disposal* facility and/or *self-hauls recyclable materials* to a *recycling* facility shall comply with the reporting requirements set forth in section 66.0711(a).
- (d) Except for occupants of single family *residential facilities*, a *person* who uses the services of a *recyclable materials collector*, which is neither a *Franchisee* nor a *Certified Recyclable Materials Collector*, to collect, transport, and

deliver *recyclable materials* generated by that *person* to a *recycling* facility, shall comply with the reporting requirements set forth in section 66.0711(a).

§ 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*, source-separated *recyclable materials* generated by that *person* or from donating to another entity, for reuse or *recycling*, source-separated *recyclable materials* generated by that *person*.

§ 66.0717 Scavenging of Recyclable Materials Prohibited

- (a) No *person* other than the *person* under contract with the generator of the *recyclable materials* to *collect the recyclable materials*, shall remove or otherwise interfere with *recyclable materials* which have been placed at a designated *recycling* or *recyclable materials collection* location.
- (b) No *person* shall be guilty of a violation of this section 66.0717 unless the *person* knew or reasonably should have known that the *recyclable materials* were set out for purposes of *collection* by another *person* authorized to *collect the recyclable materials*.

§ 66.0718 Enforcement

- (a) Authority. The *Director* is authorized to administer and enforce the provisions of Chapter 6, Article 6, Division 7 of this Code. The *Director* or anyone designated by the *Director* to be an *enforcement official* may exercise any enforcement powers as provided in Chapter 1 of this Code.

- (b) Remedies. It is unlawful to violate any provision or requirement of Division 7. The failure to comply with any requirement of Division 7 constitutes a violation of Division 7. Each instance of a violation of Division 7 is a separate offense. Violations of the provisions or requirements of Division 7 may be prosecuted as misdemeanors subject to the penalties provided in section 12.0201 of this Code. The *Director* or designee may seek injunctive relief or civil penalties in the Superior Court pursuant to section 12.0202 of this Code or may pursue any administrative remedy provided in Chapter 1, Article 2, Divisions 3 through 10 inclusive, of this Code.
- (c) Remedies Cumulative. Remedies under section 66.0718 are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.
- (d) Strict liability. Except as otherwise set forth in section 66.0717, violations of Division 7 shall be treated as strict liability offenses regardless of intent.

Section 2. That the adoption of this ordinance is not a project and, therefore, is not subject to the California Environmental Quality Act [CEQA] pursuant to CEQA Guidelines section 15060(c)(3).

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

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(O-2008-30)

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
09/17/07
Or.Dept:Atty
O-2008-30

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego,
at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

NEW LANGUAGE – Underlined

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 7, SECTIONS 66.0701, 66.0702, 66.0703, 66.0704, 66.0705, 66.0706, 66.0707, 66.0708, 66.0709, 66.0710, 66.0711, 66.0712, 66.0713, 66.0714, 66.0715, 66.0716, 66.0717, AND 66.0718 ALL RELATING TO RECYCLING FOR RESIDENTIAL FACILITIES, COMMERCIAL FACILITIES, MIXED USE FACILITIES, AND SPECIAL EVENTS.

Division 7: Recycling Ordinance

§ 66.0701 Findings

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only municipal landfill in the City. The Miramar Landfill currently is expected to close between 2011 and 2013. Preserving landfill capacity at the Miramar Landfill in order to extend the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.
- (b) The City has met (for 2004 and 2005) and continues to make progress in maintaining the waste *diversion* requirements imposed by AB 939, but additional efforts, particularly in the *recycling* of paper, cardboard, and other *recyclable materials*, will assist the City in maintaining and exceeding the goal of *diverting 50%* of its waste from landfill *disposal*.

- (c) Studies show that approximately 21% of the waste generated in the City of San Diego and delivered for landfill disposal is paper and 16% is compostable organics, all of which could be diverted from landfill disposal.
- (d) Efforts by the City and the private sector to encourage voluntary diversion of residential, commercial, and special event waste have not been as successful as the City had hoped and additional efforts are necessary to ensure continued compliance with AB 939 requirements.
- (e) Recycling programs in other jurisdictions in the State, similar to the one implemented by this Division, have proven successful in increasing diversion of recyclable materials and have been favorably received by the California Integrated Waste Management Board.

§ 66.0702 Purpose

The purpose of this Division is to establish requirements for recycling of recyclable materials generated from residential facilities (both single family and multi-family), commercial facilities (including City buildings), and special events. These requirements are intended to increase the diversion of recyclable materials from landfill disposal, conserve the capacity and extend the useful life of the Miramar Landfill, reduce greenhouse gas emissions, and avoid the potential financial and other consequences to the City of failing to meet AB 939 requirements.

§ 66.0703 Definitions

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

AB 939 has the same meaning as set forth in Section 66.0102 of this Article.

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(O-2008-30)

Certified Recyclable Materials Collector means a Recyclable Materials Collector which has been issued a certificate by the City pursuant to this Division.

Collect or Collection shall mean to take physical possession of and remove solid waste or recyclable materials at the place of generation.

Commercial facilities means any facilities that are not residential facilities or mixed use facilities. Commercial facilities includes City buildings for which the responsible person is a City of San Diego employee.

Department means the City of San Diego Environmental Services Department or its successor.

Director has the same meaning as set forth in Section 66.0102 of this Article.

Disposal means the final deposition of waste at a permitted landfill or other permitted waste facility.

Diversion or Divert means the reduction or elimination of solid waste from landfill disposal.

Franchisee has the same meaning as set forth in Section 66.0102 of this Article.

Mixed use facilities means facilities which include both residential and commercial uses.

Person has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable Materials has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable Materials Collector has the same meaning as set forth in Section 66.0102 of this Article.

Recycling or Recycle has the same meaning as set forth in Section 66.0102 of this Article.

Recycling facility means a *recycling, composting, or materials recovery or reuse facility*.

Refuse has the same meaning as set forth in Section 66.0102 of this Article.

Residential facility has the same meaning as set forth in Section 66.0127(a)(4) of this Article.

Responsible person has the same meaning as set forth in Section 11.0210 of the San Diego Municipal Code including, but not limited to, the individual or entity responsible for the management of *solid waste* at the *residential, commercial or mixed use facility* or special event for *disposal or recycling*.

Self-haul means the process of personally, or through one's own full-time employees, *collecting, transporting, and delivering one's own solid waste or recyclable materials*.

Solid waste has the same meaning as set forth in Section 66.0102 of this Article.

§ 66.0704 Unlawful Acts

It is unlawful for any person to fail to comply with any provision or requirement set forth in this Division which is applicable to such person.

§ 66.0705 Recycling Requirement for Persons Serviced by City of San Diego

Effective January 1, 2008, persons who are provided with curbside recycling collection services by the City of San Diego shall participate in the City curbside recycling program by separating recyclable materials from other solid waste and depositing the recyclable materials in the approved recycling container.

§ 66.0706 Recycling Requirement for Residential Facilities Serviced by Franchisee

(a) Occupants of Single Family Residential Facilities. Effective on the 90th day after the date of final passage of the ordinance adopting this Division, occupants of single-family residential facilities which receive solid waste collection service from a Franchisee shall participate in a curbside recycling program, offered by the Franchisee or a Recyclable Materials Collector, by separating recyclable materials from other solid waste and depositing the recyclable materials in the recycling container provided by the Franchisee or Recyclable Materials Collector.

(b) Single Family Residential Facilities Managed by Association. For single family residential facilities, whose solid waste collection services are managed by an association or other organization responsible for providing for solid waste collection services to multiple single family residential facilities within a housing development, the responsible person for the association or other organization shall provide curbside recycling services to each single family residential facility in compliance with the requirements in sections 66.0706(e) and 66.0706(f), beginning on the 90th day after the date of final passage of the ordinance adopting this Division.

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- (c) Multi-Family Residential Facilities. For multi-family residential facilities which receive solid waste collection service from a Franchisee, the responsible person shall provide on-site recycling services to occupants as required by this Division, by the following dates:
- (1) The 90th day after the date of final passage of the ordinance adopting this Division, for multi-family residential facilities with 100 residential units or more;
 - (2) January 1, 2009, for multi-family residential facilities with at least 50 but not more than 99 residential units; and
 - (3) January 1, 2010, for multi-family residential facilities with up to 49 residential units.
- (d) Occupants of Multi-Family Residential Facilities. Occupants of multi-family residential facilities which receive solid waste collection service from a Franchisee shall participate in a recycling program by separating recyclable materials from other solid waste and depositing the recyclable materials in the recycling container provided by the Franchisee or Recyclable Materials Collector, beginning on the applicable dates specified in Section 66.0706(c).
- (e) Recycling Services. The recycling services required by this Section 66.0706 shall include, at a minimum, all of the following:
- (1) collection of recyclable materials at least two times per month;
 - (2) collection of plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers;

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- (3) utilization of *recycling* receptacles which comply with the standards in the Container and Signage Guidelines established by the *Department*;
 - (4) designated *recycling collection* and storage areas; and
 - (5) signage on all *recycling* receptacles, containers, chutes, and/or enclosures which complies with the standards described in the Container and Signage Guidelines established by the *Department*.
- (f) Occupant Education. For multi-family *residential facilities*, the *responsible person* shall ensure that occupants are educated about the *recycling services* as follows:
- (1) Information, including the types of *recyclable materials* accepted, the location of *recycling* containers, and the occupants responsibility to *recycle* pursuant to this Division, shall be distributed to all occupants annually;
 - (2) All new occupants shall be given information and instructions upon occupancy; and
 - (3) All occupants shall be given information and instructions upon any change in *recycling* service to the facility.

§ 66.0707 Recycling Requirements for Commercial Facilities Serviced by Franchisee

- (a) *Commercial facilities*. For *commercial facilities* which receive *solid waste collection* services from a *Franchisee*, the *responsible person* shall provide on-site *recycling* services to occupants as required by this Division, by the following dates:
- (1) The 90th day after the date of final passage of the ordinance adopting this Division, for *commercial facilities* of 20,000 square feet or more;



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- (2) January 1, 2009, for commercial facilities of 10,000 square feet or more, but less than 20,000 square feet; and
 - (3) January 1, 2010, for commercial facilities under 10,000 square feet.
- (b) Occupants of Commercial Facilities. Occupants of commercial facilities which receive solid waste collection service from a Franchisee, shall participate in a recycling program by separating recyclable materials from other solid waste and depositing the recyclable materials in the recycling container provided by the Franchisee or Recyclable Materials Collector, beginning on the applicable dates specified in Section 66.0707(a).
- (c) Recycling Services. The recycling services required by this Section 66.0707 shall include, at a minimum, all of the following:
- (1) collection of recyclable materials as frequently as necessary to meet demand;
 - (2) collection of plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers;
 - (3) collection of other recyclable materials for which markets exist, such as scrap metal, wood pallets, and food waste, as determined by the Director, with collection of such recyclable materials required beginning on the 181st day after the City gives public notice thereof by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City and posting a notice including such recyclable materials on a list maintained on the Department's website;

- (4) utilization of *recycling* receptacles or containers which comply with the standards in the Container and Signage Guidelines established by the *Department*;
- (5) designated *recycling collection* and storage areas; and
- (6) signage on all *recycling* receptacles, containers, chutes, and/or enclosures which complies with the standards described in the Container and Signage Guidelines established by the *Department*.
- (d) Occupant Education. For *commercial facilities*, the *responsible person* shall ensure that occupants are educated about the *recycling* services as follows:
- (1) Information, including the types of *recyclable materials* accepted, the location of *recycling* containers, and the occupants responsibility to *recycle* pursuant to this Division, shall be distributed to all occupants annually;
- (2) All new occupants shall be given information and instructions upon occupancy; and
- (3) All occupants shall be given information and instructions upon any change in *recycling* service to the *commercial facility*.

§ 66.0708 Recycling Requirements for Mixed Use Facilities

- (a) Majority Residential. For a *mixed use facility* which has the majority of its square footage devoted to residential uses, the *responsible person* shall comply with the *recycling* requirements set forth in Section 66.0706 of this Division.

- (b) Majority Commercial. For a mixed use facility which has the majority of its square footage devoted to commercial uses, the responsible person shall comply with the recycling requirements set forth in Section 66.0707 of this Division.
- (c) Occupants of Majority Residential Mixed Use Facility. Occupants of a mixed use facility which has the majority of its square footage devoted to residential uses, shall comply with the recycling requirements applicable to occupants set forth in Section 66.0706 of this Division.
- (d) Occupants of Majority Commercial Mixed Use Facility. Occupants of a mixed use facility which has the majority of its square footage devoted to commercial uses, shall comply with the recycling requirements applicable to occupants set forth in Section 66.0707 of this Division.

§ 66.0709 Delivery of Recyclable Materials to Recycling Facility

Franchisees and Recyclable Materials Collectors who collect recyclable materials generated within the City shall deliver those recyclable materials to a recycling facility. Persons who self-haul recyclable materials must deliver those recyclable materials to a recycling facility. The recycling facility may be located at a landfill, but recyclable materials generated within the City shall not be delivered to a landfill or other site for disposal.

§ 66.0710 Recycling Containers

- (a) Container Signage. Automatic lift containers, bins, roll-offs, and other containers provided by Franchisees and Recyclable Materials Collectors to collect and store recyclable materials pending collection shall be clearly

identified as a *recyclable materials* container, shall display the name and phone number of the *Franchisee or Recyclable Materials Collector* to whom the container belongs, and shall display a list of the *recyclable materials* which may be deposited into the container.

- (b) Container Features. Automatic lift containers, bins, roll-offs, and other containers used to *collect* and store *recyclable materials* pending *collection* shall be equipped with close-fitting lids and be leak-proof and rodent-proof.

§ 66.0711 Annual Reports from Franchisees and Recyclable Materials Collectors

- (a) *Franchisees and Certified Recyclable Materials Collectors* shall submit an annual report by August 15 of each year, beginning August 15, 2008, to the *Department*, on a form or using a format prescribed by the *Director*.

Annual reports shall include the following information for each facility serviced within the City for the period June 30 through July 1 of the immediately preceding twelve month period:

- (1) The name of the *person(s)* responsible for *solid waste* and/or *recyclable materials* management at the facility serviced;
- (2) The name and address of the facility serviced;
- (3) The volume in cubic yards or gallons, measured by the size of the applicable containers in use at the facility, of *solid waste* and *recyclable materials* collected per week from the facility;
- (4) The frequency of *solid waste* and *recyclable materials* collection service provided to the facility; and
- (5) Additional information as required by the *Director*.

- (b) Franchisees and Recyclable Materials Collectors also shall include in the annual reports for the time period specified in section 66.0711(a) the following information:
- (1) The total amount of recyclable materials, measured in tons, collected by the Franchisee or Recyclable Materials Collector within the City; and
 - (2) The names and addresses of the recycling facilities to which the recyclable materials collected within the City were delivered for recycling.

§ 66.0712 Special Events Recycling

- (a) For a community special event requiring an event permit from the City of San Diego, the responsible person shall provide recycling receptacles throughout the event venue, effective beginning on the 90th day after the date of final passage of the ordinance adopting this Division.
- (b) The number of recycling receptacles shall equal the number of solid waste receptacles.
- (c) The solid waste and recycling receptacles shall be placed next to one another throughout the event venue.
- (d) The types of recyclable materials suitable for deposit into each recycling receptacle shall include, at a minimum, aluminum and metal cans, and glass and plastic bottles and jars.
- (e) Each recycling receptacle shall be clearly identified as a recycling receptacle and shall display a list of the types of recyclable materials which may be deposited into the recycling receptacle.

- (f) The responsible person shall ensure that the recyclable materials deposited into the recycling receptacles are delivered to a recycling facility. The recycling facility may be located at a landfill, but recyclable materials shall not be delivered to a landfill for disposal.

§ 66.0713 Exemptions

- (a) Six cubic yard exemption. Multi-family residential facilities, commercial facilities, and mixed use facilities which generate 6 cubic yards or less per week of solid waste, including recyclable materials mixed with solid waste, are exempt from the requirements of this Division. The 6 cubic yard threshold may be decreased at the discretion of the City Manager effective 90 days after the City has notified the public thereof by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City and posting a notice on the Department's website.
- (b) Other Exemptions. Other exemptions to some or all of the requirements of this Division may be granted at the discretion of the Director's designee. Applications for exemptions may be granted upon consideration of the following factors: available markets for recyclable materials, available space for recycling containers, alternative recycling efforts, and the amount and type of solid waste or recyclable materials generated. To be effective, an exemption must be in writing and signed by the Director's designee. An exemption may be revoked at any time at the discretion of the Director's designee if one or more of the factors justifying the exemption no longer exist, or other change in circumstances warrant revocation. Unless earlier revoked,



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an exemption shall be effective for a period of one year from the date it was granted. Subsequent applications for exemptions may be granted at the discretion of the *Director's* designee upon consideration of the factors listed in this section 66.0713(b).

- (c) Application for Exemption. Applications for an exemption shall be submitted to the *Department* in writing, on a form approved by the *Director*, together with a cost-recovery processing fee. The processing fee shall be reviewed annually by the City Manager and adjusted accordingly to ensure full cost-recovery for processing the application for exemption.
- (d) If the *Director's* designee denies an application for an exemption, the *Director's* designee shall notify the applicant in writing of the reasons for the denial. The denial of an application for an exemption or the revocation of an exemption may be appealed to the *Director*, whose decision shall be final.

§ 66.0714 Certified Recyclable Materials Collector

- (a) *Certified Recyclables 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. 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) Application Form and Fee. Applicants for a *recyclable materials collector* certificate shall complete and submit to the *Director* a written application, on a form approved by the *Director*, together with a cost-recovery processing fee.

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The processing fee shall be reviewed annually by the City Manager and adjusted accordingly to ensure full cost-recovery for processing the application for certification. The application shall include, at a minimum, all of the following:

- (1) name, address, and telephone number of the applicant;
- (2) name, address, and telephone number of an individual contact for the applicant;
- (3) description of each vehicle the applicant will use to provide *recyclable materials collection* services within the City including, but not limited to make, model, serial or vehicle identification number, and license number;
- (4) address where all vehicles and operating equipment used to provide *recyclable materials collection* services within the City will be stored and maintained;
- (5) the applicant's agreement 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 the applicant, or its agents, officers or employees, in the performance of the *recyclable materials collection* services, and all costs and expenses of investigating and defending against same;

provided, however, that the applicant'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;

(6) without limiting the indemnification obligation above, the applicant's agreement to obtain and maintain in full force and effect throughout the term of the *recyclable materials collector* certificate, and any extensions or modifications thereof, insurance coverage which meets or exceeds the requirements established by the *Director*; and

(7) A written statement certifying that the applicant has reviewed and will comply with the requirements of this Division and in the certificate.

(c) Insurance. The *Director*, in consultation with the City's Risk Management Department, shall establish minimum reasonable insurance requirements for *Certified Recyclable Materials Collectors*. Simultaneously with the submittal of its application, the applicant shall furnish proof satisfactory to the *Director* that the applicant has obtained the required insurance coverage. Annually on each anniversary of the issuance of the certificate, the applicant shall furnish proof satisfactory to the *Director* that the applicant maintains at least the minimum required insurance coverage.

(d) Vehicles and Equipment. All vehicles, containers, and other equipment used to provide the *recyclable materials collection* services shall be kept in a clean and well-maintained condition.

- (e) Container Signage. Automatic lift containers, bins, roll-offs, and other containers used to collect and store recyclable materials pending collection shall be clearly identified as a recyclable materials container, shall display the name and phone number of the Certified Recyclable Materials Collector to whom the container belongs, and shall display a list of the recyclable materials which may be deposited into the container.
- (f) Container Features. Automatic lift containers, bins, roll-offs, and other containers used to collect and store recyclable materials pending collection shall be equipped with close-fitting lids and be leak-proof and rodent-proof.
- (g) Compliance with Law. Certified Recyclable Materials Collectors shall conduct all of their activities in compliance with all applicable federal, state, and local laws, regulations, ordinances, and requirements and shall be responsible for obtaining all applicable permits, licenses, certifications, and registrations.
- (h) Application Verification. The Director may independently verify any and all statements made or implied in the application or any accompanying documents. The Director may also request clarification from the applicant of any such statements or information.
- (i) Application Review. In reviewing each application, the Director shall take into consideration all components of the application including, but not limited to:
- (1) the ability of the applicant to meet the requirements of this Division and the certificate;

- (2) any history of criminal or civil violations that may compromise the public's interest; and
- (3) the completeness, accuracy, and validity of the application.
- (i) Application Determination. After a reasonable review period, the Director shall grant or deny the application. If the Director fails to grant an application after thirty days from the receipt of a complete application, including accompanying documentation, the applicant may at the applicant's option deem the application denied. If the Director denies an application, the Director shall notify the applicant in writing of the reasons for the denial.
- (k) Certificate Revocation. The Director may revoke a certificate if the Director determines, after providing notice and an opportunity for a hearing, that a Certified Recyclable Materials Collector has violated the provisions in the certificate or any applicable law. If the Director revokes a certificate, the Director shall notify the applicant in writing of the reasons for the revocation.
- (l) Appeal Upon Denial of Application or Revocation of Certificate. Within thirty days after the issuance of a written notice of the denial of an application or the revocation of a certificate, the applicant or Certified Recyclable Materials Collector may request in writing to the Director that the City Manager review the Director's decision. Within thirty days of the Department's receipt of such a request, a meeting with the City Manager or designee shall be scheduled to review the items cited in the written notice. At that meeting, the applicant or Certified Recyclable Materials Collector may provide any additional information in support of their position. Within thirty days of such a meeting,

the City Manager will issue a written decision on the application or revocation, which shall include the reasons for the decision. The City Manager's decision shall be final. A copy of the City Manager's written decision shall be provided to the applicant or Certified Recyclable Materials Collector and the Director.

§ 66.0715 Self-Haul and Use of Non-Certified Recyclable Materials Collector

- (a) Nothing in this Division shall preclude any person from self-hauling recyclable materials generated by that person to a recycling facility.
- (b) The responsible person for a multi-family residential facility, commercial facility, mixed use facility, or association or organization described in section 66.0706(b), which self-hauls solid waste to a disposal facility shall comply with the recycling requirements in this Division applicable to that multi-family residential facility, commercial facility, mixed use facility, or association or organization described in section 66.0706(b).
- (c) Except for occupants of single family residential facilities, a person who self-hauls solid waste to a disposal facility and/or self-hauls recyclable materials to a recycling facility shall comply with the reporting requirements set forth in section 66.0711(a).
- (d) Except for occupants of single family residential facilities, a person who uses the services of a recyclable materials collector, which is neither a Franchisee nor a Certified Recyclable Materials Collector, to collect, transport, and deliver recyclable materials generated by that person to a recycling facility, shall comply with the reporting requirements set forth in section 66.0711(a).

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§ 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, source-separated recyclable materials generated by that person or from donating to another entity, for reuse or recycling, source-separated recyclable materials generated by that person.

§ 66.0717 Scavenging of Recyclable Materials Prohibited

- (a) No person other than the person under contract with the generator of the recyclable materials to collect the recyclable materials, shall remove or otherwise interfere with recyclable materials which have been placed at a designated recycling or recyclable materials collection location.
- (b) No person shall be guilty of a violation of this section 66.0717 unless the person knew or reasonably should have known that the recyclable materials were set out for purposes of collection by another person authorized to collect the recyclable materials.

§ 66.0718 Enforcement

- (a) Authority. The Director is authorized to administer and enforce the provisions of Chapter 6, Article 6, Division 7 of this Code. The Director or anyone designated by the Director to be an enforcement official may exercise any enforcement powers as provided in Chapter 1 of this Code.
- (b) Remedies. It is unlawful to violate any provision or requirement of Division 7. The failure to comply with any requirement of Division 7 constitutes a violation of Division 7. Each instance of a violation of Division 7 is a separate

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offense. Violations of the provisions or requirements of Division 7 may be prosecuted as misdemeanors subject to the penalties provided in section 12.0201 of this Code. The *Director* or designee may seek injunctive relief or civil penalties in the Superior Court pursuant to section 12.0202 of this Code or may pursue any administrative remedy provided in Chapter 1, Article 2, Divisions 3 through 10 inclusive, of this Code.

- (c) Remedies Cumulative. Remedies under section 66.0718 are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.
- (d) Strict liability. Except as otherwise set forth in section 66.0717, violations of Division 7 shall be treated as strict liability offenses regardless of intent.

GCL:mb
09/19/07
Or.Dept:ESD
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RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO ESTABLISH COST RECOVERY FEES FOR PROCESSING APPLICATIONS FOR EXEMPTIONS FROM THE RECYCLING REQUIREMENTS AND FOR APPLICATIONS TO BECOME A CERTIFIED RECYCLABLE MATERIALS COLLECTOR

WHEREAS, the City operates the Miramar Landfill [Landfill], which currently is the only municipal landfill in the City; and

WHEREAS, the Landfill is expected to close between 2011 and 2013; so preserving Landfill capacity in order to extend the useful life of the Landfill for the benefit of the citizens of the City is of paramount concern; and

WHEREAS, the California Integrated Waste Management Act of 1989, Assembly Bill 939 [AB 939], requires that each local jurisdiction in the State divert 50% of waste from landfill disposal; and

WHEREAS, the City could face fines up to \$10,000 per day for not maintaining at least a 50% diversion rate mandated by State law and showing good faith efforts to comply with the City's Integrated Waste Management Plan; and

WHEREAS, increasing recycling is necessary both to preserve and extend the useful life of the Landfill and to further efforts to reduce waste and comply with State mandates; and

WHEREAS, diverting waste generated from residential and commercial facilities and special events will assist the City in its efforts to maintain and exceed the State-mandated waste diversion rate; and

WHEREAS, voluntary residential and commercial recycling programs have not produced the waste diversion necessary to ensure continued compliance with state mandates; and

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WHEREAS, except in unusual circumstances, it is feasible for residential and commercial facilities to accommodate recycling containers and signage and to implement recycling programs;

and

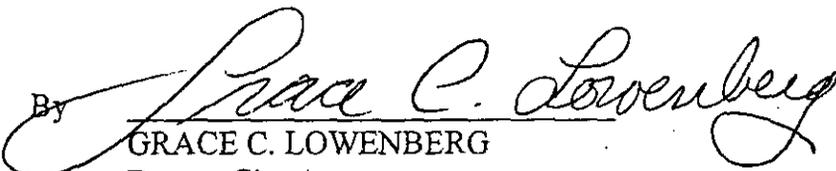
WHEREAS, large volumes of recyclable materials also are generated at special events; and

WHEREAS, companion ordinance O-2008-30 [City Recycling Ordinance] establishes recycling requirements for residential facilities, commercial facilities, mixed use facilities, and special events within the City, which include requirements for applications for exemptions from the recycling requirements and applications to become a Certified Recyclable Materials Collector; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor is authorized to establish cost recovery fees for processing applications for exemptions from recycling requirements and applications to become a Certified Recyclable Materials Collector in connection with the City Recycling Ordinance, and directing that these fees be filed in the Ratebook of City Fees and Charges in the Office of the City Clerk.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that this activity is statutorily exempt from the California Environmental Quality Act [CEQA] pursuant to CEQA guideline 15273(a)(1) because it constitutes the establishment of new fees for the purposes of meeting operating expenses associated with implementing and enforcing the requirements of the City Recycling Ordinance.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
GRACE C. LOWENBERG
Deputy City Attorney