

MEMORANDUM OF LAW

DATE: July 20, 1995

TO: Robert A. Epler, Assistant Environmental Services Director

FROM: City Attorney

SUBJECT: Automated Refuse Collection Program

In a memorandum to this office dated June 29, 1995, you asked:

1. Does the Automated Refuse Collection Program ("Program"), and the imposition of a fee for the second automated container violate the 1919 People's Ordinance with respect to the collection of refuse (San Diego Municipal Code ("SDMC") section 66.0123)?
2. Does SDMC Section 66.0122 need to be amended, or is it legally sufficient to require automated containers?

As indicated, in the attached memorandum dated September 10, 1992 to Yvonne Williams of your department, the imposition of a fee for the second automated container does not violate the People's Ordinance. The People's Ordinance requires that "residential refuse shall be collected, transported and disposed of . . . and there shall be no City fee imposed or charged for this service . . . ." SDMC Section 66.0123(c)(i) (emphasis added). In addition, the People's Ordinance requires that residential refuse be placed at the curb of a public street at a designated time and in approved containers. SDMC Section 66.0123(a)(ii) (emphasis added). Consequently, residential refuse may be collected with no City fee being imposed if an approved container is utilized.

Simply, the Program does not violate the 1919 People's Ordinance. The City Council has authorized the City Manager to implement the Program. The Program requires that a particular container must be used before refuse may be collected. Citizens may obtain an approved container from the City or other sources. The refuse will be collected with no fee imposed if an approved container is used.

Second, SDMC Section 66.0122 may be amended as suggested. As a matter of fact, this amendment process was suggested in the attached September 10, 1992 memorandum. However, if an amendment to SDMC Section 66.0122 does not occur, it is not legally fatal to the Program. Plenty of notice is given to the affected citizens regarding the Program and the type of container required.

In conclusion, the Program as presently constituted does not violate the 1919 People's Ordinance and our office would again recommend

amending SDMC Section 66.0122 as previously indicated. The suggested wording, attached to your June 29, 1995 memorandum, is appropriate.

Please call if you have any questions.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

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Attachment

cc Richard Hays

Chuck Woolever

ML-95-46