

MEMORANDUM OF LAW

DATE: August 21, 1995

TO: Helen L. Heim, Deputy Environmental Service Director

FROM: City Attorney

SUBJECT: Private Hauling of Recyclable

In a memorandum dated June 13, 1995, you asked our office what sections in the San Diego Municipal Code ("SDMC") apply to a private hauler of either commercial or residential recyclables. Specifically, the Environmental Services Department ("ESD") has received requests for approval for the operations of private curbside recycling programs. This approval is required by the Department of Conservation before a private company or individual can receive payments from California Redemption Value ("CRV") containers collected pursuant to the program.

Three questions were asked of our office:

QUESTION NO. 1: Does the SDMC apply to privately operated curbside recycling program which utilizes one collection vehicle?

QUESTION NO. 2: Does the SDMC apply to privately operated curbside recycling program which utilizes two or more collection vehicles?

QUESTION NO. 3: Does the SDMC apply to commercial recyclable haulers?

The following is our response to each question.

ANSWER TO QUESTION NO. 1

PRIVATELY OPERATED CURBSIDE RECYCLING PROGRAM - ONE COLLECTION VEHICLE.

Public Resource Code ("PRC") section 40059(a)(1)(2) provides in part,

Notwithstanding any other provision of law, each county city, district, or other local government agency may determine all of the following:

(1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

(2) Whether the services solid waste handling are to be provided by means of nonexclusive franchise, contract, license, permit. (Emphasis added.)

PRC section 40195 defines "solid waste handling" as the

"collection, transportation, storage, transfer, or processing of solid waste." "Processing" is, in turn, defined as "the reduction, separation, recovery, conversion, or recycling of solid waste." (See PRC section 40177.) Consequently, solid waste handling includes the recycling of solid waste. (See *Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.*, 7 Cal. 4th 478, 488 (1994).

The City has the authority to regulate solid waste handling pursuant to a license. The issue is which section(s) in the SDMC, if any, apply to a privately operated curbside recycling program which constitutes a solid waste handling service.

In SDMC section 66.0102(a), it defines refuse as including, "'residential refuse,' 'nonresidential refuse,' and 'recyclable waste material'" Recyclable waste material is defined in SDMC 66.0102(i) as "discarded materials such as, but not limited to, newspapers, glass and metal cans, which are or can be separated from other garbage or refuse for the purpose of recycling." (Emphasis added.)

In applying the definition of recyclable waste material to the materials collected by a private curbside recycling program, the materials would fall within the definition if they are discarded. In *Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.*, 7 Cal. 4th at 486, the Supreme Court addressed what constitutes the discarding of material by stating, "property that is sold for value - for example, recyclable, a recyclable - is not 'discarded' under any traditional understanding of the term. 'Discard' means 'to throw away.'"

The proposed curbside recycling programs require citizens to pay for the recycling service. The residences participating in the program are not selling the recycling waste material for value. They are discarding the recycling waste material. This material would fall under the definition of "refuse" as defined in SDMC section 66.0102(a) and would be subject to all applicable statutes governing the collection, transportation, and disposal of refuse. If the recycling materials were sold for value then the sections governing the licensing requirements for the collection, transportation, and disposal of refuse would not apply.

In SDMC section 66.0107(a), it provides,

No person shall collect, transport, or dispose of refuse within the City of San Diego without a current, unrevoked license issued by the City Manager. No vehicle shall be used in the collection, transportation, and disposal of refuse within the City of San Diego unless it carries a current, unrevoked tag or decal issued by the City Manager.

A license is required for the operation of a private curbside recycling program. The license costs \$150. (SDMC section 66.0112.) In addition, insurance would be required for the operation of a private curbside recycling program, (SDMC section 66.0115) as well as a cash or surety

bond of \$10,000 would be required of a licensee. (SDMC section 66.0116.)

SDMC section 66.0108(i) requires all license applications shall include "facts demonstrating that the applicant owns or has the legally enforceable right to use at least two collection vehicles, the bodies of which are closed, leakproof, and constructed for the purpose of refuse collection, transportation and disposal." The private curbside recycling corporation or individual must either own or have the legally enforceable right to use at least two collection vehicles. Failure to meet this requirement would constitute an incomplete application and the City Manager would have the discretion to accept or reject the application. (See SDMC section 66.0117.)

SDMC sections do apply to a private curbside recycling program that utilizes one collection vehicle. As a matter of fact, the City Manger has the authority to determine whether the particular curbside recycling program should be licensed. The pertinent issue isn't the number of collection vehicles utilized, however, but how the recycling material would be classified. The answer to that question centers on whether the material is being "discarded."

Based upon the above analysis, the operation of a private curbside recycling program would require compliance with all applicable SDMC sections pertaining to the licensing requirements for the collection, transportation, and disposal of refuse. This analysis would not apply to a curbside recycling program that pays for the recycling waste material collected.

ANSWER TO QUESTION NO. 2

PRIVATELY OPERATED CURBSIDE RECYCLING PROGRAM - TWO COLLECTION VEHICLES.

Analysis is same as above except that the license application would be complete as it relates to SDMC section 66.0108(i).

ANSWER TO QUESTION NO. 3

COMMERCIAL RECYCLING HAULER

Analysis is the same as above. The definition of "refuse" in the SDMC includes "nonresidential refuse." (See SDMC section 66.0102(a). There is no language within the licensing requirements in the SDMC that would require a commercial recycling hauler to be treated differently than a private curbside recycling hauler.

HAULERS ACTING AS AGENTS

Risk Management expressed concern that sending a letter of approval to the operators of a recycling service for the purposes of the CRV redemption would create a agent relationship with the hauler. Attached is a memorandum of law ("MOL") written by Deputy City Attorney Sharon Marshall. Based upon the MOL, it would appear that the additional insurance of \$500,0000 for comprehensive general liability coverage, as suggested by the Risk Management Department, would be necessary to adequately protect the City.

Don't hesitate to call if I can be of further assistance.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

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Attachment

cc Richard Hays, Director of Environmental Services

Robert Epler, Assistant Director of Environmental Services

Kip Sturdevan, Recycling Program Manager

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