

MEMORANDUM OF LAW

DATE: November 20, 1995

TO: Richard L. Hays, Environmental Services Director

FROM: City Attorney

SUBJECT: San Diego Municipal Code Definition of Recyclable Waste
Materials/Franchising

In a memorandum dated November 7, 1995, you asked whether the definition of "recyclable waste material" may be excluded from the broad definition of "refuse" without violating the purpose and intent of the 1919 People's Ordinance ("Ordinance"). The definition of "recyclable waste material" may be excluded from the definition of "refuse" without violating the purpose and intent of the Ordinance.

Previously, by memorandum, you asked whether The City of San Diego may franchise for the collection of recyclables from single-family residences. The City may franchise and charge for the collection of recyclables from single-family residences. The following is our brief analysis of both issues.

Recyclable Waste Material

San Diego Municipal Code ("SDMC") section 66.0123(a)(i) (1919 People's Ordinance) defines refuse as ". . . waste material of any nature or description generated within the City limits, excluding hazardous or toxic chemicals, wastes, materials or substances as defined now or hereinafter by federal or state law or regulation." (Emphasis added.) "Residential Refuse" as defined in SDMC section 66.0123(a)(ii) "means refuse . . . generated from a Residential Facility" Consequently, the definition of "Residential Refuse" includes the definition of "Refuse."

Section 66.0102 further defines "Refuse." "'Refuse' shall have the same meaning as, and shall include, 'refuse,' 'residential refuse,' 'nonresidential refuse,' and 'recyclable waste material,' as defined herein and in Section 66.0123 of this Code." SDMC Section 66.0102(a) (Emphasis added). "Recyclable waste material" is "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." SDMC Section 66.0102(i). Thus, the definition of "recyclable waste material" is included in the definition of "refuse."

Section 66.0123(c)(i) requires the City to collect, transport, and dispose of "residential refuse" without imposing a City fee for the cost

of providing that service. Since the definition of "recyclable waste material" is included in the definition of "refuse," the City arguably would be precluded from charging a fee for the collection, transportation, and disposal of recyclable materials. However, section 66.0102 may be amended to exclude "recyclable waste materials" from the definition of "refuse" and thus avoid the application of the 1919 People's Ordinance.

Further, excluding the definition of "recyclable waste material" from the definition of "refuse" does not violate the intent of the Ordinance. As indicated in section 66.0123 (a) (i), the current definition of what constitutes waste material determines the applicability of the Ordinance. The definition of "solid waste" (waste material) in the Pub. Res. Code Section 40191 does not include a specific reference to recycling material. Recycling is defined in Pub. Res. Code Section 40180 as the "process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream (emphasis added)." Therefore, recycled material is not solid waste if the material is recycled and returned to the economic mainstream.

Franchising Curbside Recycling Collection

Pub. Res. Code Section 40059(a)(1)(2) provides in part,

- (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental 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, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the

governing body of the local governmental
agency by resolution or ordinance.

(Emphasis added.) (See San Diego City Charter section 103.)

Pub. Res. Code 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 Pub. Res. Code Section 40172.) 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)) and the recycling of solid waste may be a service provided pursuant to a franchise agreement.

Therefore, according to state statutes, the collection of recyclables from single-family residences may be accomplished by the implementation of a franchise.

Finally, the authority for the City to charge for the collection of recycling material is found in Public Resources Code section 41901 which states in part, "a city . . . may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan" Part of implementing a integrated waste management plan may include a recycling program provided by the City or franchisee by charging a fee that covers the cost of the service provided.

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

JOHN W. WITT, City Attorney

By

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cc Robert Epler

Kip Sturdevan

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