

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: June 3, 2016

TO: Christopher Ojeda, Fiscal and Policy Analyst, Office of the Independent Budget Analyst

FROM: City Attorney

SUBJECT: Second Weekly Refuse Collection in Mission Beach

INTRODUCTION

The Independent Budget Analyst (IBA), in analyzing the Mayor's revised Fiscal Year 2017 Budget, has inquired whether the City may provide a second weekly refuse collection in Mission Beach during the summer months under the People's Ordinance. The People's Ordinance was first adopted in 1919 as a voter initiative and subsequently amended in 1981 and 1986. City forces currently provide once weekly refuse collection, at no cost, to all City residences that receive the service under the People's Ordinance.

QUESTION PRESENTED

May the City provide a second weekly refuse collection in Mission Beach during the summer months under the People's Ordinance?

SHORT ANSWER

The City may collect "residential refuse" twice weekly in Mission Beach during the summer months if a rational basis exists for the preferential treatment. A rational basis may exist due to the severe fly problem that has been reported to exist in Mission Beach during the summer months and which may be alleviated by a second refuse collection.

ANALYSIS

THE CITY MAY COLLECT "RESIDENTIAL REFUSE" TWICE WEEKLY IN MISSION BEACH IF A RATIONAL BASIS EXISTS

The People's Ordinance, codified at San Diego Municipal Code section 66.0127, governs the collection, transportation, and disposal of refuse in the City of San Diego. The City is required to collect, transport, and dispose of "residential refuse" at least once per week at no cost to the

residence. SDMC § 66.0127(c)(1). “Residential refuse” is refuse normally generated from a “residential facility” and which is placed at the curb line of public streets at designated times in approved containers.^{1, 2} Because the People’s Ordinance does not specify the number of refuse collections that must occur each week, the City may, as a policy decision, collect “residential refuse” twice weekly in Mission Beach.³

However, an additional collection could be seen as preferential treatment for Mission Beach residences, as no other residences within the City receive more than one collection per week under the People’s Ordinance. Accordingly, should the City provide this additional collection, the preferential treatment must comport with equal protection. Equal protection under the federal and state constitutions requires that governmental decision makers treat parties equally under the law if those parties are, in all relevant respects, alike. U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 7; *Las Lomas Land Co., LLC v. City of Los Angeles*, 177 Cal. App. 4th 837, 857 (2009). To withstand legal scrutiny, a rational basis must exist for the preferential treatment. Namely, the twice weekly collection must bear a rational relationship to a legitimate state interest. *Warden v. State Bar*, 21 Cal. 4th 628, 650 (1999). In this case, a rational basis may exist due to the severe fly problem that has been reported to exist in Mission Beach during the summer months and which may be alleviated by a second refuse collection.⁴

¹ “Residential Facility” is a single family or multi-family residential structure that is used and occupied through ownership, lease or rental for periods of one month or more (“nontransient occupancy”). SDMC § 66.0127(a)(4); SDMC § 66.0127(a)(5).

² Waste Management Regulation R-009-10 provides additional requirements for eligibility under the People’s Ordinance. The City may issue additional administrative regulations, pursuant to San Diego Municipal Code sections 66.0127 and 66.0124, to address any remaining ambiguity within the People’s Ordinance.

³ However, the City shall not collect “nonresidential refuse,” which is all refuse that is not “residential refuse.” SDMC § 66.0127(c)(2); SDMC § 66.0127(a)(3).

⁴ Courts have upheld governmental actions that target nuisances and public health and safety concerns as exercises of legitimate state interests. *See County of Tulare v. Nunes*, 215 Cal. App. 4th 1188 (2013); *see also Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012).

CONCLUSION

The City may, as a policy decision, collect “residential refuse” twice weekly in Mission Beach if a rational basis exists for the preferential treatment.⁵

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By */s/Amanda Guy*
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ALG:jls
cc: Kevin Faulconer, Mayor
City Councilmembers
Andrea Tevlin, Independent Budget Analyst
Scott Chadwick, Chief Operating Officer

MS-2016-17

⁵ If the City does not provide the additional collection, the Mission Beach community may seek other alternatives, such as additional refuse collection service through the formation of a Maintenance Assessment District or by contracting with one of the City’s franchised haulers.