

Winston, Ashley

From: Joel Corona <joelcorona@calwaste.com>
Sent: Monday, February 09, 2015 6:12 PM
To: Brooks, Desley;sgarza@oaklandnet.com
Cc: David Duong;Kristina Duong;Norris, Richard
Subject: Update from California Waste Solutions to Councilmember Brooks
Attachments: CWS to Honorable Brooks.020915.pdf

02/09/15

Dear Councilmember Brooks,

California Waste Solutions appreciates your interest and support in the ongoing negotiation of the Zero Waste services contract for MM&O and RR.

Attached is a letter from CWS that expresses our understanding and concerns about that process and our reasonable concerns.

We wish to continue keeping you informed and remain available to you if you have questions of our team.

Please call either David, Kristina or me if your or your staff has questions.

Sincerely,
California Waste Solutions

Joel Corona



February 9, 2015

The Honorable Desley Brooks
Oakland City Hall
1 Frank H. Ogawa Plaza, Suite 243
Oakland, CA 94612

Dear Councilmember Brooks,

Thank you for the interest and questions about concerns expressed by CWS regarding the MMO and RR contract completion and terms.

The major points CWS wishes to share include the following:

1. WM has neither completed the MOU with CWS nor paid CWS for our RFP award compromises. Those compromises were made, in large part, to ensure a smooth and successful solid waste service transition for the City of Oakland on July 1, 2015 and end WM's aggression toward the City and CWS.
2. CWS continues needing RR contract to review from the City so that contract can be completed. CWS was told it should receive the draft RR contract on February 4, 2015.
3. Although CWS has ordered and will soon begin receiving collection trucks, containers and other capital equipment, CWS cannot complete conventional financing for those assets to serve the City until after CWS and the City have a contract for service.
4. CWS has continually expressed its growing concern about if and how the terms being negotiated between the Zero Waste Negotiating team and Waste Management could disfavor CWS and/or the City. CWS requested to review the WM-City draft MM&O agreement and meet collaboratively with the City and WM.

In detail, below CWS provided a table that compares the position WM expressed and CWS's reciprocal concerns about WM's positions.

The content below has been expressed to the Zero Waste negotiating team, some is copied from earlier e-mails we sent to the Zero Waste team.

	WM Position	CWS Concern
1)	WM refuses to use the number of dwelling units established by the City during the RFP process.	The City required that CWS use 165,239 dwelling units as the basis for converting the per ton cost of RR services to a per-resident charge. The City and CWS are charged with the responsibility of establishing the correct number of SFD's and WM should accept direction from the City on this issue.
2)	WM demands that CWS bill SFD and MFD customers separately for some ancillary services and	The RR and MMO Agreements provide for the MMO Contractor to bill for ancillary services. Contamination surcharges are not identified

CALIFORNIA WASTE SOLUTIONS INC.

www.californiawastesolutions.com

1820 10th Street, Oakland, CA 94607 USA Phone: 510.832.8111 Fax: 510.832.8206

	contamination fees	as ancillary services in the RFP because they were not a part of the RFP. CWS believes that upon the establishment of contamination surcharges, they must be included as ancillary services because they are ancillary services. It is assumed in the RR contract in the RFP that the RR Contractor will not have a billing operation. Instead, the MMO contractor is expressly charged with the obligation to undertake all billing.
3)	Generally, the MMO contractor takes the credit risk with respect to customer payments for RR over the course of the contract. There is uncertainty regarding the risk as it applies to certain ancillary billings, including contamination surcharges. That credit risk was part of the financial analysis undertaken by MMO bidders. WM takes the position that it will not pay certain ancillary charges including contamination surcharges unless and until it is paid by the customer, and asserts the desire to charge CWS fees for what it will conduct.	CWS does not know if there will be any ancillary services for which WM is not obligated to make payment as accrued. If there are, then CWS notes that WM must be obligated to apply past due payments equitably to WM and CWS until all past due payments are current. CWS notes that if WM is not obligated to apply all payments to the most delinquent amounts, the effect will be that WM will not collect the amounts due to CWS and CWS will remain unpaid.
4)	Draft contact language between WM and the City show that the \$1.5M letter of credit that was originally established to ensure CWS will be paid by WM has since been deleted.	CWS is concerned about why WM's was relieved of its obligation to provide the \$1.5M LOC that ensures payment to CWS, if WM withholds payment CWS.

Please see excerpts from the City of Oakland Zero Waste MMO contract in the RPF which provides the following citations:

7.03 ...CONTRACTOR shall base its billings for Residential

1120 Recycling Collection Services on the Maximum Recycling Service Rates as set forth in Exhibit 1 (1121) and Customer information provided by the Residential Recycling Contractor and/or CITY as (1122) appropriate. [This may change after a final determination is made as to who is going to provide (1123) the actual dwelling unit count for the invoices - the RR Contractor or the City]

The language of the MMO Agreement is clear to the effect that it is the right and obligation of the City and CWS to determine the "actual dwelling unit count" and that it is the obligation of WM to pay the Maximum Recycling Service Rate as directed by the City.

7.04.2 ...To the extent the invoice [for ancillary charges] is received (1141) in a timely manner and contains the necessary information in the required form and format (1142) CONTRACTOR shall include those ancillary charges in the invoices prepared

CALIFORNIA WASTE SOLUTIONS, INC.

www.californiawastesolutions.com

1820 10th Street, Oakland, CA 94607 USA Phone: 510.832.8111 Fax: 510.832.8206

for the upcoming (1143) billing cycle. In the event the ancillary service invoice is not received in a timely manner or the (1144) information is not provided in the required form and format, CONTRACTOR shall notify CITY (1145) and the Residential Recycling Contractor of the timing or format discrepancies and shall not be (1146) required to include the ancillary charges in the invoices prepared for the upcoming billing cycle.

The MMO Agreement is also clear with respect to WM's obligation to bill customers for Ancillary Services.

1332 * 7.14.5 Non-Payment of Monthly Invoice or Ancillary Charges. In the event (1333) CONTRACTOR does not provide payment of monthly invoices or ancillary charges to (1334) Residential Recycling Contractor in the time and manner set forth in this Section, CITY shall, (1335) within five (5) Work Days of receiving knowledge of such non-payment, draw such funds as are (1336) necessary from CONTRACTOR'S letter of credit established in Section 24.03 of this Contract to (1337) pay the Residential Recycling Contractor.

Additionally, the MMO Agreement gives the City access to a Letter of Credit from WM to pay CWS amounts that WM fails or refuses to pay when due. We believe that LOC was in the amount of \$1.5M. CWS learned that the City has relieved WM of the obligation to post a letter of credit and is very concerned that the rights of CWS under the agreements set forth in the RFP have been given away by the City without regard to the adverse impact on CWS.

We appreciate your assistance at reviewing and inquiring about these comparisons which maintain standards that protects the City of Oakland and CWS.

Please call upon us when you have questions and we may assist.

Sincerely,
CALIFORNIA WASTE SOLUTIONS



Joel Corona

CC: Kristina Duong, David Duong, Richard Norris

CALIFORNIA WASTE SOLUTIONS, INC.

www.californiawastesolutions.com

1820 10th Street, Oakland, CA 94607 USA Phone: 510.832.8111 Fax: 510.832.8206

Winston, Ashley

From: Flores, John
Sent: Friday, February 20, 2015 2:08 PM
To: DL - City Council; Mayor's Office
Cc: Levin, Brooke A.; Kattchee, Susan
Subject: Zero Waste Contract Signed

Dear Mayor and City Councilmembers,

I'm pleased to inform you that the Mixed Material and Organics and Disposal Agreements with Waste Management of Alameda County have been executed. The City's Zero Waste Team worked diligently and tirelessly to bring these contracts to conclusion. Staff bargained hard, advocating for the interest of the residents and businesses of Oakland and carrying out the City Council's policy direction. There were complex challenges that had to be overcome due to the short time period for implementation, and resolving the interests of the multiple parties. Every party involved made concessions to make this work. Over the last few days we have worked with the East Bay Municipal Utility District to address their input and concerns. We resolved several issues to their satisfaction, and there is one item on which we continue to disagree. That disagreement does not preclude our ability to execute the contract, and I am confident that the language finalized by the City is fair and reasonable to move us forward so that the City will have continuity of garbage service on July 1, 2015. I am confident that the framework provided for in the MMO Agreement enables EBMUD and WMAC to be successful in their partnership.

The Zero Waste team is working with California Waste Solutions to bring the Residential Recycling Agreement to conclusion shortly as well. A status report on implementation of the new programs is scheduled for the March 31st City Council meeting.

...John Flores
Interim City Administrator

Winston, Ashley

From: Tucker, David <DTucker2@wm.com>
Sent: Wednesday, February 25, 2015 10:57 AM
To: Guillen, Abel;Campbell Washington, Annie;Kalb, Dan;Brooks, Desley;Reid, Larry;Office of the Mayor;McElhaney, Lynette;Gallo, Noel;Kaplan, Rebecca
Cc: Kattchee, Susan
Subject: Thank you from Waste Management of Alameda County

Good morning Mayor and Council members, I would like to share a message from Barry Skolnick regarding the recent signing of the MMO contract.

David

Honorable Council Members:

As you know, on Friday, February 20, 2015, City Administrator John Flores and Waste Management of Alameda County signed the Mixed Materials & Organics and Disposal contracts. While the path to this point had many twists and turns, the Public Works Agency staff and Waste Management worked diligently to craft final contracts that provide clear direction to achieve the city's diversion goals and provide residents and businesses with trash and composting services that will reduce waste, increase recycling and compost as well as combat illegal dumping.

Since the October award of the MM&O and Disposal contracts to Waste Management of Alameda County and the Recycling contract to California Waste Solutions, the two companies have been working cooperatively to design a robust outreach program to launch the city's innovative zero waste program.

We are proud to continue our tradition of service. We have deep roots in the community and continue to expand these roots through our partnerships with local businesses and nonprofit organizations such as Youth Uprising, East Bay Rental Housing Association, the Oakland Ethnic Chambers as well as a proposed coordination of outreach communications with Oakland Councilmember offices. Our commitment to Oakland is demonstrated in the investment we're making in natural gas vehicles to serve all neighborhoods and improvements at Davis Street to capture recyclables and organics.

I look forward to celebrating the July 1 start date of the contract with you. If you'd like to discuss our efforts, please feel free to call me directly at 775-326-2317 or bskolnic@wm.com.

Best,
Barry

Recycling is a good thing. Please recycle any printed emails.

Winston, Ashley

From: Sierra Club <information@sierraclub.org> on behalf of Dan Morgan
<sierra@sierraclub.org>
Sent: Thursday, February 26, 2015 9:00 PM
To: Brooks, Desley
Subject: Implement a true zero-waste system for Oakland!

Feb 26, 2015

Councilmember Desley Brooks
CA

Dear Councilmember Brooks,

As an Oakland resident, I urge you to support an efficient, sustainable, and fair Zero-Waste program.

The city's new waste-hauling and recycling franchise agreements must include a mandatory third bin for organic waste services for all Oakland residents, including apartment- and condo-dwellers (40% of Oakland's households) at no additional cost. This is an issue of equity, and was part of the approved agreement with California Waste Solutions.

Separating green waste at the source also protects recycling workers from hazardous conditions on the job. Our neighbors San Francisco and Alameda, as well as the cities of Seattle and New York, have already recognized the benefits and adopted (or are in the process of adopting) source-separated organics-collection systems that include multi-family residents. Moreover, evidence suggests that the quality of compost from source-separation green waste is superior.

The franchise agreements must also incorporate the existing, local EBMUD facility to process source-separated organics. This will not only prevent extra miles traveled by haulers, but will also provide the city and Port with access to an affordable source of renewable energy.

We commend you for taking a stand for fair wages and benefits for Oakland's recycling workers, and urge you to continue your support for workers: please require Waste Management to sign a labor contract before signing a contract with them.

We want these provisions in the new contract just as they were incorporated into the agreement with CWS:

- Mandatory "Third Bin": source separation of organics for all Oakland residents (including at apartment buildings)
- The use of the East Bay MUD facility for conversion of Oakland's green/food waste into renewable energy
- Fair wages for all recycling workers
- Improved bulky waste pick-up services to help decrease illegal dumping
- Meaningful inclusion of local nonprofit Civicorps to engage, train, and provide skilled jobs for Oakland's underprivileged young adults
- In-county customer service call center
- State-of-the-art new recycling facility at the former Oakland Army Base
- Lowest-possible rates for the ratepayers

Oakland has a rare opportunity to solidify standards for services that will have a positive impact on the environment, workers, and the community for years to come. We can't afford to waste this chance. And we urge you to act in the best interest of Oakland residents and the environment! Thank you.

Winston, Ashley

From: Maher, Sean
Sent: Monday, April 27, 2015 9:34 AM
To: Brooks, Desley
Subject: Zero Waste outreach

Councilmember, good morning and happy Monday!

As I'm preparing to present at next week's Council meeting on the outreach for our new Zero Waste contracts, I'd like to get input from each of the Councilmembers about what aspects of outreach are most important to them in their districts. If you have some time to discuss your thoughts this week, either in person or by phone as your schedule allows, I'd be grateful for the conversation. I imagine your schedule is a bit more hectic in mind, so if you'd like to talk please let me know a time or two that work for you and I will try to accommodate. My thanks in advance for your thoughts and continuing leadership.

Cheers,
Sean

--

Sean Maher
Zero Waste Outreach Program Manager
Bureau of Environmental Services
City of Oakland | Oakland Public Works | APWA Accredited Agency
250 Frank H. Ogawa Plaza, Ste 5301 | Oakland, CA 94612
(510) 238-7968 Desk | (510) 473-2610 Cell
smaher@oaklandnet.com

Winston, Ashley

From: Joel Corona <joelcorona@calwaste.com>
Sent: Thursday, May 07, 2015 8:45 PM
To: Cappio, Claudia; Levin, Brooke A.; Dowdakin, Becky; Office of the Mayor; McElhaney, Lynette; Kaplan, Rebecca; Guillen, Abel; Kalb, Dan; Brooks, Desley; Gallo, Noel; Reid, Larry; Campbell Washington, Annie; Bolotina, Olga; Jones, Andre; sgarza@oaklandnet.com; IZWald@Oaklandnet.com; David Duong; Kristina Duong
Subject: CWS Reply to Oakland City Administrator - Zero Waste Negotiation for RR Contract Update & request for Meeting May 8 or 11
Attachments: CWS letter to Oakland May 7 Zero Waste Negotiation.050715.dd.pdf; City Proposed 30.02 Material & 30.03 Markets May 1 2015.pdf; City Proposed Diversion Calculation May 6 2015.pdf; CWS Repsone to City Contamination Language.050715.pdf; CWS Response to City 30.02 & 30.03.050715.pdf

05/07/15

Dear City Administrator, Mayor, Council President and Councilmembers,

Please accept CWS's letter reply regarding updates to the Zero Waste negotiations between the City and CWS and in response following our May 6 negotiation meeting.

CWS and the City share the goal to sign a fair and reasonable contract and progress to providing Oakland the best recycling services.

CWS and the City staff have made progress and only four essential matters remain to resolve between to CWS and the City.

We request another CWS-Zero Waste team meeting on either Friday 5/8 or Monday 5/11 to resolve outstanding matters.

Please contact David, Kristina or me if you have questions and we may provide more explanation to you.

Sincerely,

Joel Corona

May 1, 2015

30.02 Changes in Materials.

In the event quantity, composition or quality of the Recyclable Materials Collected under the terms of this Contract is shown to the reasonable satisfaction of the City to have substantially changed from what it was at the inception of this Contract, such that CONTRACTOR's costs and/ or ability to achieve the annual Diversion requirements set forth in Article 8 are materially affected, the parties shall negotiate in good faith (a) a reasonable and appropriate modification to those annual Diversion requirements, and/ or (b) other adjustments to the Contract potentially including CONTRACTOR's compensation, if modifications to the annual Diversion requirements are not desired by the CITY or do not adequately address the change in the Recyclable Materials Collected. CITY and CONTRACTOR shall not unreasonably withhold agreement to such modifications.

30.03 The commodity market for recyclables frequently experiences cyclical changes and significant fluctuations in market price due to supply and demand, periodic strikes, transportation issues and other reasonably foreseeable events. This Section 30.02 is not intended to address market price fluctuations or other changes due to this type of events. If such events occur during the term of this Contract, CONTRACTOR shall be solely responsible for mitigating any potential economic impacts and shall not look to CITY for compensation adjustments. However, if a recyclable commodity market becomes unavailable or economically non-viable due to an extraordinary circumstance which is not reasonably foreseeable, for example Chinese markets prohibit the import of recyclables from the United States, and such event affects the ability of CONTRACTOR to comply with the provisions of Article 8, CITY or CONTRACTOR may request that the parties enter into good faith negotiations regarding modifications to this Contract in order to provide CONTRACTOR relief from such an extraordinary event causing a material change. Under such extraordinary circumstances, CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the provisions of Article 7 and/or 8 and/or other adjustments to CONTRACTOR's obligations under this Contract. CITY and CONTRACTOR shall not unreasonably withhold agreement to such modification.

2436284.1

May 1, 2015 Letter City to CWS
May 6, 2015 to CWS

05/07/15

Below is an outline of an alternative option to address the diversion calculation issue:

1. CONTRACTOR shall Divert 90% of the portion of all material Collected under this contract as follows:
100% of all material Collected under this contract minus the weight of Contamination.
2. The weight of Contamination shall be measured through one waste characterization/Contamination study annually provided that the City shall have the right to require additional characterization/Contamination studies in its reasonable discretion.
3. Diversion shall be measured by dividing the weight of material actually recovered during Processing of Collected material by the weight of all material Collected under this contract minus the weight of Contamination. Contamination for the purposes of this Section shall include all materials which would constitute Contamination regardless of whether or not such materials render more than 10% of the contents of the container in which they were deposited materially unsuitable for Diversion.
4. The weight of material actually recovered during Processing shall be measured by subtracting the weight of material sent to the landfill from the weight of material Collected minus the weight of Contamination.
5. The waste characterization/Contamination study shall be conducted by qualified third party contractors approved by CITY. City shall not unreasonably withhold approval of qualified contractors. CONTRACTOR shall bear all costs for one study per year and such costs shall be allocable from Contractor's Outreach Budget. In the event that the City elects to conduct more than one characterization/Contamination study in any year, the City shall pay the cost of such study unless the study finds that the amount of Contamination in the material Collected by Contractor hereunder is more than one percent (1%) less than the amount of Contamination found in the prior study in which case CWS shall be responsible for the cost of such study. CITY or its representatives shall have access to observe and monitor studies.
6. Nothing in this section shall preclude the City from studying Contractor's Processing and recommending changes or improvements in Processing provided that CWS shall not be obligated to make such recommended changes or improvements so long as CWS is not in default hereunder.

CWS Response to Proposal submitted to CWS May 6, 2015 by City of Oakland

May 7, 2015

30.02 Changes in Materials. In the event quantity, composition or quality of the

Recyclable Materials Collected under the terms of this Contract is shown to the reasonable satisfaction of the City to have substantially changed from what it was at the inception of this Contract, such that CONTRACTOR's costs and/ or ability to achieve the annual Diversion requirements set forth in Article 8 are materially affected, the parties shall negotiate in good faith (a) a reasonable and appropriate modification to those annual Diversion requirements, and/ or (b) other adjustments to the Contract potentially including CONTRACTOR's compensation, if modifications to the annual Diversion requirements are not desired by the CITY or do not adequately address the change in the Recyclable Materials Collected . CITY and CONTRACTOR shall not unreasonably withhold agreement to such modifications.

30.03 The commodity market for recyclables frequently experiences cyclical changes and fluctuations in market price due to supply and demand, periodic strikes, transportation issues and other reasonably foreseeable events. This Section 30.03 is not intended to address ordinary market price fluctuations. This Section 30.03 is intended to address material and unexpected changes in markets and market prices. If there is a material change in a recyclable commodity market or market price upon which Contractor reasonably depends for sale of recyclables Diverted hereunder, due to restricted availability or unavailability, or economic non-viability or other factors that are outside the control of Contractor and not reasonably foreseeable by Contractor at the time of the execution of this Agreement and such a change in markets effects the ability of Contractor to comply with the provisions of Article 8 or significantly increases Contractor's costs or reduces Contractor's

revenue, CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the provisions of Article 8 (eg. elimination of certain Recyclable Materials and/or adjustments to Contractor's compensation if changes to Article 8 are not desired by the City or do not adequately compensate Contractor for the material market change). Under such extraordinary circumstances, CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the provisions of Article 7 (rates) and/or 8 and/or other adjustments to CONTRACTOR's rights or obligations under this Contract. CITY and CONTRACTOR shall not unreasonably withhold agreement to such modification.

2436284.1

CWS May 7 revision to proposal submitted to CWS by City on May 1

REVISED

Attachment A

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 DEC 20 PM 12:46 **OAKLAND CITY COUNCIL**

RESOLUTION No. 83689 - C.M.S.

Approved as to Form and Legality

City Attorney

RESOLUTION ADOPTING THE RECOMMENDED SYSTEM DESIGN TO MEET THE ADOPTED ZERO WASTE STRATEGY - DEVELOP A NEW WASTE MANAGEMENT SYSTEM DESIGN IN PREPARATION OF OAKLAND'S NEXT COLLECTION AND DISPOSAL CONTRACTS

WHEREAS, the City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County, and the Agreement for Residential Recycling Service with California Waste Solutions expire on June 30, 2015; and

WHEREAS, in 2006 through Resolution No. 80286 C.M.S. the City Council adopted a Zero Waste Strategic Plan that included Strategy 2, Develop and Adopt New Rules and Incentives to Reduce Waste Disposal, which states: "Development and adoption of a new waste management system design in preparation for Oakland's next collection and disposal contract is key to the goal of reducing waste;" and

WHEREAS, the City will use a request for proposals procurement process to secure future solid waste, organic material, and recycling collection, processing and disposal services; and

WHEREAS, in 2009 through Resolution No. 81870 C.M.S. the City Council adopted Evaluative Criteria for assessing Zero Waste system models to replace the expiring franchise and recycling agreements, and directed staff to use these criteria in assessing Zero Waste system models and present a preferred model to Council for consideration; and

WHEREAS, in 2000 the City of Oakland disposed of 421,000 tons in landfills, and 291,000 tons in 2010, a reduction of 130,000 tons per year; and

WHEREAS, Alameda County 2008 Waste Characterization Study identifies organic material as the largest remaining recoverable material type, representing 49% of Oakland's total landfill disposal, or approximately 100,000 tons landfilled in 2010; and

WHEREAS, solid waste generated by multifamily dwellings and commercial businesses is rich in organic material that is primarily food and food-soiled paper; and

WHEREAS, diversion of organics from landfill represents the greatest opportunity for waste diversion and material recovery; and

WHEREAS, mandates on multi-family dwelling building owners and businesses to ensure recycling at their buildings and businesses are likely to be implemented by the state and/or

Alameda County in the near future, and greater access to recycling and organics collection services will be needed to comply with these mandates; and

WHEREAS, multifamily dwellings provide a significant challenge to the provision and use of recycling services because the building owner must allow the recycling containers to be placed on the property, overcome space constraints, promote the service to tenants, and address improper use; and

WHEREAS, the tenant turnover rates in multifamily dwellings requires constant renewal of public education and information on recycling programs, and

WHEREAS, other communities have used processing of mixed materials for multifamily dwellings to significantly improve waste diversion from this sector; and

WHEREAS, according to analysis of landfill tonnage data from the State and Oakland franchise tonnage reports, 26% of Oakland's total annual landfill tonnage, or 74,000 tons in 2010, is hauled by parties other than the solid waste franchisee, and consists largely of construction and demolition (C&D) debris; and

WHEREAS, the current system for C&D debris hauling pre-dates Oakland's Construction and Demolition Debris Waste Reduction and Recycling Ordinance, and allows large amounts of C&D debris to be hauled to landfills without any recycling; and

WHEREAS, independent recyclers in Oakland make a significant contribution to Oakland's waste diversion and recycling performance by providing valuable recycling collection services to Oakland businesses; and

WHEREAS, there are businesses in Oakland that generate organic by-products that are used on farms and destinations other than solid waste or composting facilities, providing environmental and community benefits; and

WHEREAS, continued voluntary efforts alone are unlikely to result in satisfactory progress toward Oakland's Zero Waste Goal; now therefore be it

RESOLVED: that the City Council adopts the Zero Waste System Design described in the report dated November 29, 2011 to be used in a Request for Proposals process, that will reduce landfill disposal to 120,000 tons per year by 2030, a reduction of 170,000 tons per year, that has these elements:

1. A single franchise for citywide garbage and organics collection services capable of maximizing diversion of organics and minimizing landfill disposal of garbage, and provides recycling services to Oakland businesses on a non-exclusive basis.
2. A single franchise for citywide residential recycling focused on maximizing recycling, particularly in the challenging multifamily sector.
3. Landfill capacity procured separately from collection and processing services to attract the broadest pool of proposers on the garbage and organics franchise, by eliminating landfill ownership as a barrier.

4. A permit system to regulate commercial recycling services to continue operation of the long-established independent recyclers, and allow the City to establish and enforce waste diversion and other performance standards.
5. A non-exclusive franchise system to regulate construction and demolition (C&D) debris hauling activities, allow the City to establish and enforce waste diversion and other performance standards, and to stimulate broader use of mixed debris processing facilities in the region.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 17 2012, 20

PASSED BY THE FOLLOWING VOTE:

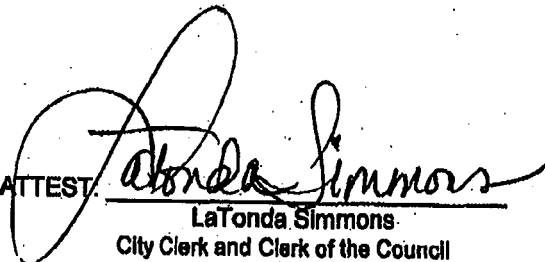
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 MAY 21 PM 3:26

APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.28 ("SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING"), TO IMPLEMENT THE ZERO WASTE SYSTEM DESIGN AND ZERO WASTE COLLECTION SERVICES FRANCHISE CONTRACTS, BY: 1) ESTABLISHING A NUISANCE ABATEMENT PROCESS TO ADDRESS FAILURES TO ENSURE PROPER HANDLING OF SOLID WASTE; 2) RESTRICTING COLLECTION OF COMMERCIAL ORGANIC MATERIALS TO AUTHORIZED COLLECTORS; 3) CHANGING DEFINITIONS AND OTHER PROVISIONS TO ALLOW FOR REGULATION OF COMMERCIAL RECYCLERS AND NON-EXCLUSIVE FRANCHISE HAULERS OF CONSTRUCTION AND DEMOLITION DEBRIS, AND 4) CONFORMING THE NEW ZERO WASTE SYSTEM TO THE ZERO WASTE COLLECTION SERVICES FRANCHISES AWARDED BY CITY COUNCIL, SERVICES TO BEGIN JULY 1, 2015.

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

WHEREAS, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion goal of seventy five (75) percent by 2010; and

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., adopting a goal of 75% reduction of waste going to landfills by 2010 in support of the Measure D goal, and the implementation date established by the Alameda County Source Reduction and Recycling Board; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. adopting a Zero Waste Goal by 2020; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and

WHEREAS, in 2012 the City Council of the City of Oakland approved Resolution No. 83689 C.M.S., establishing Zero Waste System Design; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a), the Oakland City Charter Article X, and Oakland Municipal Code Chapter 8.28, the City determined that the public health, safety, and well-being require that an exclusive right be awarded to qualified contractors to provide for the collection of Mixed Materials and Organics and for the collection of Residential Recycling and that commercial recyclers and collection of construction and demolition debris shall be provided pursuant to a non-exclusive system, all in order to meet the requirements of the Act and the City's Zero Waste Goal by 2020, and to implement the Zero Waste Strategic Plan and the Zero Waste System Design; and

WHEREAS, the new Zero Waste System makes various changes to the manner in which solid waste is regulated handled and solid waste collection services are made available to the public, which therefore requires that Chapter 8.28 of the Oakland Municipal Code, entitled "Solid Waste Collection and Disposal and Recycling," be amended to implement the new system.

WHEREAS, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant, CEQA Guidelines section 15301, CEQA Guidelines section 15307, CEQA Guidelines section 15308, CEQA Guidelines section 15273, CEQA Guidelines section 15183, and/or CEQA Guidelines section 15061 (b) (3); and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying environmental analysis dated July 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 8.28 ("Solid Waste Collection and Disposal and Recycling") of the Oakland Municipal Code is herein provided, with additions underscored and deletions ~~stricken through~~.

Chapter 8.28 - SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING

8.28.010 - Definitions.

For the purpose of this chapter, certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:

"Bulky goods" means materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household

appliances, including appliances containing freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, large plant debris, and corrugated cardboard.

"Business" means of or pertaining to a commercial establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.

"City" means the city of Oakland, and such territory outside the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

"City Administrator" means the City Manager of the city of Oakland; further provided, that the use of the title of any officer or to any office shall refer to such officer or office of the city of Oakland.

"Collect" or "Collection" means to pick up discarded material.

"Collector" means the solid waste and yard waste collector franchised by the city.

"Commercial" means of or pertaining to a business establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.

"Commercial recycler" means a person who or entity that has complied with the requirements of the city to collect and transport recyclable materials from commercial entities in the city.

"Construction and demolition debris" means waste building materials resulting from construction, remodeling, repair or demolition operations on any house, residential property, commercial building, pavement or other structure for which the city requires a building or demolition permit, or from a non-permitted municipal project. Construction and demolition debris includes but is not limited to rocks, soils, tree remains and other plant debris which results from land clearing or land development operations in preparation for construction.

"Director" means the Director of Public Works of the city, or his or her authorized representatives.

"Container" means a bin, cart, roll-off box, compactor or other vessel approved by the city for use in containing materials set out for collection.

"Customer" means the person subscribing to collection services.

"Director" means the person or persons designated by the City Administrator to administer this chapter. The City Administrator may designate multiple persons to administer individual provisions of this chapter.

"Discarded material" means garbage, mixed materials, recyclable materials, organics or bulky goods generated at a premises and placed in a manner and location that is designated for collection.

"Disposal" or "Dispose" means the disposition of mixed materials, solid waste, and residue at the disposal facility, or (a) the placement of any materials collected in landfills, including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, section 20686 (as it may be amended from time to time); or (b) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T (as it may be amended from time to time).

"Disposal facility" means the sanitary landfill, or other solid waste disposal facility, utilized for the receipt and final disposition of some or all of the solid waste mixed materials, garbage and residue collected or accepted.

"Dwelling" means a residence, flat, apartment, or other facility used for housing one or more persons in the city.

"Finance Officer" means the Director of the Office of Budget and Finance of the city, or his or her authorized representatives.

"Divert", "diverted," or "diversion" means the avoidance of (a) disposition in a landfill including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, section 20686 (as it may be amended from time to time); (b) "transformation" as defined by Public Resources Code section 40201 (as it may be amended from time to time); or (c) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T (as it may be amended from time to time).

"Dwelling unit" means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. Dwelling units include live/work units, as defined by Oakland Planning Code section 17.65.160 (as it may be amended from time to time). Dwelling units do not include work/live units, as defined by Oakland Planning Code Section 17.65.150, which are considered commercial.

"E-waste" means waste that is powered by batteries or electricity, such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, calculators and other items that the California Department of Toxic Substances Control has determined, or determines in the future, to be a covered electronic device under Public Resources Code section 42463 (as it may be amended from time to time).

"Finance Officer" means the city revenue representative designated by the City Administrator.

"Fixed body vehicle" means any wheeled motor vehicle that does not rely on a roll-off box or other detachable container to collect, contain and transport material.

"Generator" means a person, commercial business or any other entity that produces solid waste, mixed materials, organic materials, bulky goods or recyclable materials.

Hazardous Waste.

1. "Hazardous waste" means any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste discarded material after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code (as they may be amended from time to time).

2. "Hazardous waste" shall include, but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local, state or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste" or "toxic substances," or similarly identified as hazardous to human health or the environment, including those so defined in or

pursuant to any of the following statutes: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (i) the Comprehensive Environmental Response, Compensation and Liability Act; 49 U.S. Code Section 1801 ("CERCLA") of 1980, 42 USC section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act; California Health & Safety Code Section 25100, et seq. (Hazardous Waste Control); Section 25300, et seq. (the Hazardous Substance Account Act); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); the 49 USC section 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section 25115-25117, 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.; (vii) California Water Code section 13050; and (viii) all rules and regulations adopted and promulgated pursuant to such statutes, and subsequently enacted amendments to or recodifications of such statutes and any regulations subsequently adopted or amended pursuant to these statutes, as well as any subsequently enacted or amended federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances or any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products.

"Material recovery facility" means any plant or site used facility approved by the city that is designed, operated and legally permitted for the purpose of sorting, cleansing, treating or reconstituting recyclables and returning them to the economy receiving and processing recyclable materials, organic materials or mixed materials.

"Medical waste" means all materials defined as medical waste in the California Health & Safety Code Section 25023.2, not including waste identified as not being medical wastes in Sections 25023.5 and 25023.8, or the regulations promulgated thereunder, as amended from time to time.

"Multi-family. "Mixed materials" means all materials that are set out by the service recipient for collection by the MM&O collector excluding items that are source separated. Mixed materials do not include items defined herein as construction and demolition debris or unacceptable waste.

"Mixed materials and organics collector" or "MM&O collector" means the collector that has entered into a MM&O contract with the city to be the exclusive provider of MM&O collection services.

"MM&O contract" means the agreement between the city and the MM&O collector authorizing the MM&O collector to provide MM&O collection services.

"Multi-family dwelling" or "MFD" means any residential structure with five or more living units and/or any residential structure which uses bin service for solid waste collection. (5) or more living units including any flat, apartment, condominium, town home, service-enriched housing or other residence and other dwelling units in detached buildings and excluding a hotel, motel, dormitory, sheltered nursing facility, rooming house or other such similar facility as determined by the city.

"Organic materials" or "Organics" means plant debris, food scraps, compostable food ware, compostable food containers, compostable paper, horse stable matter and other material that are

source separated for collection or for self haul pursuant to Section 8.28.115. Organic materials do not include items herein defined as construction and demolition debris or unacceptable waste.

"Organic-recyclable material" means organic materials such as vegetable, fruit, grain, dairy, meat, fish, yard, tree, wood, and nonrecyclable paper discards which are set aside, handled, packaged, or offered for collection separate from solid waste for the purpose of being processed and then returned to the economic mainstream in the form of commodities such as, but not limited to, compost, soil amendments, mulch, animal feed, and fertilizer.

"Owner," when used in reference to a dwelling, "Owner" means the person or persons holding legal title to the dwelling premises.

"Person" means an individual, association, partnership, corporation, joint venture, the United States, the state of California, any municipality or other political subdivision thereof, or any other entity whatsoever.

"Premises" means any land or building in the city where solid waste, yard waste or recyclables organic materials, and/or recyclable materials are generated or accumulated.

"Processing" means an operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares recyclable materials, organic materials, mixed materials or bulky goods and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted products.

"Processing facility" means a facility which has adequate capacity for the receipt, sorting, storage and processing (including without limitation, grinding, chipping, screening, preparation for and performance of composting of yard waste materials) of recyclables so that they may be further processed or sold to end-use markets, approved by the city which is designed, operated and legally permitted for the purpose of receiving and processing collected materials.

"Recyclable materials" means those materials that are source separated for the purposes of being reused or processed into other usable forms, whether the recyclable materials are discarded, donated or sold.

"Residential recycling collector" or "RR collector" means the collector that has entered into a RR contract with the city to be the exclusive provider of residential recycling collection services.

"Residue" or "residual" means materials remaining after the processing of mixed materials, recyclable materials, organic materials or bulky goods which cannot reasonably be diverted.

"RR contract" means the agreement between the city and the RR collector authorizing the RR collector to provide RR collection services.

"Service recipient" means a person receiving collection services.

"Single-family dwelling" or "SFD" means a detached or attached residence containing four (4) or fewer dwelling units when each dwelling unit is designed or used for occupancy by one (1) or more individuals.

Recyclables.

1. "Recyclables" means nonhazardous residential, commercial, or industrial materials or by-products which are set aside, handled, packaged, or offered for collection in a manner different than solid waste for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities.

2. ~~Recyclables include but are not limited to paper (newspaper, magazines, corrugated cardboard, kraft paper, ledger paper, computer print out, box board, and other paper grades); glass; ferrous and nonferrous metal materials; plastic containers, films, packaging materials and scrap; and construction and demolition materials. Recyclables shall include source separated materials and organic recyclable materials.~~

~~"Recycler" means a person or entity which is permitted by the city to collect and transport recyclables or organic recyclable material.~~

~~"Residual" means contaminant material, separated from recyclable material or yard waste, which cannot be recycled, composted, marketed or otherwise utilized, and which shall be disposed of as solid waste, hazardous waste, or medical waste, as appropriate.~~

~~"Single family dwelling" means any dwelling which has four or fewer living units within it and/or those dwellings which use can service for solid waste collection.~~

"Solid waste" means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, but does not include and includes recyclable materials and organics that have not been source separated recyclables which comply with the residual content limits in Section 8.28.030. Solid waste does not include abandoned vehicles and parts thereof, hazardous waste or low-level radioactive waste, medical waste, or unacceptable waste or yard waste which is source separated at single family dwellings.

"Source separated" means recyclables materials that have been segregated from mixed materials or solid waste by or for the generator thereof on at the premises at which they were generated for handling different from that of solid waste diversion. This does not require that different types of recyclable commodities be separated from each other, except from organic recyclable material materials.

"Tenant," when used in reference to a dwelling, means any person or persons, other than the owner, occupying or in possession of the dwelling.

"Transfer station" means a facility with all appropriate permits utilized to receive solid waste collected materials, to temporarily store, separate, recover, convert or otherwise process the the collected materials comprising the solid waste, and to transfer the solid waste to vehicles for transport to a collected materials to a processing or disposal facility as appropriate.

"Unacceptable waste" means any and all waste, including but not limited to hazardous waste, household hazardous waste and medical waste, the acceptance or handling of which by collector would cause a violation of any permit condition or legal or regulatory requirement, damage or substantial damage to collector's equipment or facilities, or present a substantial endangerment to the health or safety of the public or collector's employees; provided, that de minimis quantities or waste of a type and amount normally found in solid waste or mixed materials after implementation of programs for the safe collection of household hazardous waste shall not constitute unacceptable waste.

"Universal waste" or "u-waste" means waste that the California Department of Toxic Substances Control ("DTSC") considers universal waste (California Code of Regulations Title 22, Div 4.5, Ch 23), including materials such as batteries, thermostats, lamps, cathode ray tubes,

computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps and certain mercury-containing devices.

~~"Yard waste" means single family dwelling prunings, brush, leaves, grass clippings and such other similar types of organic waste that may be specified by the city in its reasonable discretion for collection by the collector pursuant to the franchise agreement between the city and the collector. Untreated and unpainted wood which fits within the yard waste container provided by collector is also yard waste.~~

8.28.020 - Procedures for determining maximum rates of compensation.

~~The charge for the collection of solid waste by the collector within the city shall be those A.~~

The charges for the collection of mixed materials, organic materials, bulky goods and recyclable materials by the MM&O collector and the RR collector shall be as determined by, respectively, the MM&O collector and the RR collector although such rates shall not exceed the maximum rates established and adjusted according to procedures established by the City Council. A copy of the adjusted maximum rates shall be filed in the Office of the City Clerk by June 30th of each year by the Finance Officer/Director.

~~A. The current rates are set forth in Section 8.28.290~~

~~B. The current rates shall be adjusted to reflect changes in the Consumer Price Index ("CPI"), as set forth in the franchise agreement between collector and city, as determined by the Finance Officer.~~

~~C. Non-CPI related rate adjustments may be granted by the B.~~ The City Council, in the exercise of its legislative discretion, may authorize the MM&O collector and/or RR collector to impose other related adjustments to the maximum rates, consistent with the terms of the franchise agreement contracts between the city and the RR collector and the city and the MM&O collector.

8.28.030 - Collection of recyclable or organic recyclable materials.

A. Residential Recyclable Materials. It is unlawful for any person other than the RR collector or those persons employed by the RR collector to collect or transport any recyclable materials from SFD or MFD premises within the city except:

1. Recyclable materials that are removed from any SFD or MFD premises and transported to a transfer station, recycling center, or material recovery facility by the occupant;
2. Recyclable materials that are collected and transported by city crews to a transfer facility, a material recovery facility, or such other appropriate processing facility;
3. Recyclable materials that are source separated at any premises by the generator and donated or sold. Recyclable materials are considered "donated or sold" so long as the person collecting the recyclable materials does not receive a net payment from the generator (including but not limited to any payment for consulting and/or management fees related to the collection of any waste and/or recyclable materials);
4. Beverage containers, other than those set out for collection by the RR collector, that are delivered for recyclable materials under the California Beverage Container

Recyclable Materials Litter Reduction Act, section 14500, et seq. (as it may be amended from time to time);

5. Recyclable materials that are removed from a premises in a fixed body vehicle by a property management, maintenance or cleanup service company as an incidental part of the total on-property cleanup or maintenance service offered by the company rather than as a hauling service;
6. Recyclable materials that are removed from a premises by the MM&O collector as part of the provision of MM&O collection services under the terms of the MM&O contract.
7. Recyclable materials that are removed from a premises by a company through the performance of a service that the collector has elected not to provide;
8. Recyclable materials removed from a premises for no more than a nominal charge by a retailer as an incidental part of a sale of merchandise; and
9. Recyclable materials removed from a premises for no more than a nominal charge by a reuse facility or reuse business.

B. Commercial Recyclable Materials. It is unlawful for any person or entity other than the following to collect or haul any recyclable material from commercial premises within the city: (a) a commercial recycler or those persons employed by a commercial recycler, or (b) the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR Contracts, respectively.

A. Permits. All persons collecting and transporting recyclables or organic recyclable material within the city must hold a valid city business license. Recyclers C. Commercial Recycler Permits. All commercial recyclers collecting and transporting commercial recyclable materials within the city, other than the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR contracts respectively, must hold a commercial recycling permit. A person desiring to obtain a commercial recycling permit shall apply to the Director. The Director shall grant the permit if he or she finds that the applicant has satisfied the applicable requirements specified in the regulations adopted by the City Council governing commercial recyclers and paid the applicable permit fee. The Director may revoke a commercial recycling permit if he or she finds, after providing the permit holder notice and opportunity to be heard, that the permittee has failed to meet the requirements of the permit or has violated any provision of this chapter. Commercial recyclers shall be required to maintain records, in a prescribed format and schedule, documenting that all recyclables or organic-recyclable material materials that they collect and transport, less allowable residual, is recycled. Such records shall be maintained in an auditable form for at least three (3) years, and the city shall have the right promptly to examine said records upon written request. Notwithstanding anything to the contrary in this subsection, a commercial recycling permit shall not be required until such time as the City Council has adopted regulations governing commercial recyclers.

BD. Limits on Residual Content. Recyclables or organic-recyclable material-Recyclable materials collected by commercial recyclers shall be source-separated and recycled at a recycling

facility, that holds all applicable permits, and ~~(1) if mixed paper, may contain no more than ten percent by weight of residual per load; or (2) if commingled recyclables other than mixed paper may contain no more than five percent by weight of residual per load.~~ Any load of recyclables and/or organic-recyclable material which materials that contains more than the aforementioned residual, shall be disposed of in accordance with all applicable laws and regulations. Disputes over whether material should be classified as recyclables or organic recyclable material or solid waste materials or mixed materials will be resolved by the Director. The Director's decision may be appealed to the City Manager-Administrator in writing, explaining the basis of the appeal, within ten (10) days of such decision and the payment of a five hundred dollar (\$500.00) appeal fee. The burden of proof shall be on the person challenging the Director's decision. The City Manager-Administrator or his or her designee designed hearing officer shall hear said dispute and render a written decision which shall be final. It is unlawful for any person except for the collector to collect organic recyclable material, other than wood, mixed with recyclables. However, simultaneous collection of recyclables and organic-recyclable material shall be permitted if said organic recyclable material is placed in a separate watertight compartment of the collection vehicle, which shall be final.

~~C. Service and Permit Fees. Nothing herein shall prevent recycler from charging fees for collection, transporting, and/or processing services rendered for recyclables or organic recyclable materials.~~

8.28.040 - Ownership of recyclable materials.

A. Mixed Materials & Organics Collector. Title to materials collected by the MM&O collector under the terms of the MM&O contract shall pass to the MM&O collector at such time as said materials are placed in a container and/or set out for collection provided, however, title to unacceptable waste shall remain with the generator unless expressly accepted by the MM&O collector.

B. Residential Recyclables Collector. Title to materials collected by the RR collector under the terms of the RR contract shall pass to the RR collector at such time as said materials are placed in a container and/or set out for collection provided, however, title to unacceptable waste shall remain with the generator unless expressly accepted by the RR collector.

~~Recyclables or organic~~ C. Commercial Recyclers. Title to commercial recyclable materials collected by a commercial recycler shall become the property of the authorized commercial recycler when placed at designated recycling locations for collection by the recycler unless otherwise provided by contract between the authorized commercial recycler and the generator of the materials or his or her agent. A recycling-recyclable materials collection container shall constitute a designated recycling location.

8.28.050 - ~~Right of persons to dispose of recyclables or organic control the handling of recyclable material materials.~~

A. Residential Recyclable Materials. Nothing in this chapter shall limit the right of any person to donate, sell, or transport residential recyclable materials that they generate to a facility that holds all applicable permits provided that any such activity is in accordance with the provisions of this chapter.

~~Nothing in this chapter shall limit the right of any person to donate, sell, transport, B.~~

Commercial Recyclable Materials. Nothing in this chapter shall limit the right of any person to donate, sell, transport, or pay a commercial recycler for the removal of, or otherwise dispose of their own recyclables or organic recyclable material materials they generate on commercial premises the person occupies, provided that any such activity is in accordance with the provisions of this chapter.

8.28.060 - Collection of ~~solid waste~~ mixed materials and organic materials restricted to MM&O collector.

It is unlawful for any person other than the MM&O collector or those persons employed by the MM&O collector to collect or haul any ~~solid waste, and source separated yard waste from single family dwellings~~ mixed materials, organic materials, or bulky goods from premises within the city except:

- ~~A. Source separated recyclables, including but not limited to those collected by a person under contract to the city and those collected through private arrangements between the generator and the collector. Loads which consist of mixed paper and which contain more than ten percent by weight of residual shall not be considered source separated recyclables. Loads which consist of recyclables other than mixed paper and which contain more than five percent by weight of residual shall not be considered source separated recyclables;~~
- A. Persons who haul mixed materials and organics pursuant to a self-haul permit as set forth in Section 8.28.115 herein.
- ~~B. Construction debris (1) removed from a premises by a licensed contractor as an incidental part of a total construction, remodeling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility;~~
- C. Lawn and garden trimmings (1) removed from a premises by a contractor-B. Service providers transporting organic materials removed from a premises as an incidental part of a total landscaping or gardening service offered by that contractor, service provider rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus; or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility;.
- ~~D. Animal~~ C. Persons transporting animal waste and remains from slaughterhouses and butcher shops, or grease waste for use as tallow;.
- ~~E. By-products~~ D. Persons transporting by-products of sewage treatment, including sludge, grit and screenings;.
- ~~F. Solid waste or yard waste collected and transported by city crews~~ E. City crews collecting mixed materials, bulky goods, or organic materials and transporting that material to a disposal facility, transfer station, processing facility, or material recovery facility;.
- ~~G. Solid waste hauled~~ F. A person who generates mixed materials, organic materials, or bulky goods and hauls those materials directly to a transfer station or disposal facility by a person who is also the generator of the solid waste; and.
- H. A person transporting homogeneous organic by-products such as spent hops or coffee bean chaff which are generated by food product manufacturers and processors delivered to destinations other than solid waste or compost facilities and used as livestock feed

I. A retailer removing bulky goods from a premises for no more than a nominal charge as an incidental part of a sale of merchandise

J. A facility or reuse business removing bulky goods from a premises for no more than a nominal charge.

H. Recyclables which are donated to a youth, civic or charitable organization.

8.28.070 - Transportation of solid waste mixed materials, organics, and recyclable materials on city streets restricted to collector.

It is unlawful for any person other than the A. MM&O collector or those persons employed by the MM&O collector to transport over or upon the streets of the city any solid waste, or source-separated yard waste from single-family dwellings, mixed materials, organic materials, or bulky goods from any premises, produced in the city, except in those cases described in Section 8.28.060.

B. It is unlawful for any person other than the RR collector or those persons employed by the RR collector to transport over or upon the streets of the city any recyclable materials from single-family or multi-family dwellings, produced in the city, except in those cases described in Sections 8.28.030 and 8.28.050.

C. It is unlawful for any person other than an authorized commercial recycler or those persons employed by an authorized commercial recycler or the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR Contracts, respectively, to transport over or upon the streets of the city any recyclable materials from commercial premises, produced in the city, except in those cases described in Sections 8.28.030 and 8.28.050.

8.28.080 - City Franchise fees.

The city may attach a surcharge on solid waste fees collected by the collector to compensate the city for some or all of the cost of programs to clean up litter and illegal dumping on public streets and rights-of-way. Said surcharges shall be collected by the collector and remitted to the Finance Officer on a scheduled basis and shall be in the amounts established by the City Council.

In consideration of the special franchise right granted by the city to the MM&O collector and the RR collector, to transact business, provide services, use the public street and/or other public places, and to operate a public utility for MM&O and RR collection services, the city may negotiate and collect a franchise fee from the MM&O collector and from the RR collector. The amount and terms of payment of the franchise fee shall be as specified in the award of the franchise, the contract, or both.

8.28.090 - Recycling surcharge fee.

The city may attach a surcharge on Solid Waste fees collected by the collector to compensate the city for some or all costs incurred in achieving the waste reduction mandates set by the state of California in the Integrated Waste Management Act of 1989 or any other applicable state or local statute. Said surcharge shall be collected by the collector and remitted to the Finance Officer on a scheduled basis and shall be in the amounts established by the City Council.

The city may, pursuant to Public Resources Code section 41901 (as it may be amended from time to time), impose a fee on MM&O customers, to be collected by the MM&O collector, in amounts sufficient to pay the costs of preparing, adopting, and implementing the Alameda

County Integrated Waste Management Plan. The fee shall be enacted by Ordinance.

8.28.100 – Required – Proper solid waste collection and disposal required.

Every owner of any premises in the city in, upon, or from which shall ensure that arrangements are made to properly dispose of the solid waste is created, produced, or accumulated shall dispose of on the solid waste premises through the either maintaining a subscription for regular solid waste collection service of the collector, and shall pay therefor the rate or rates set by the city from the MM&O collector or self-hauling pursuant to a permit issued under Section 8.28.115. Arrangements with the collector shall be made by each such owner for the required collection of solid waste, and such arrangements shall specify the location of the premises, solid waste container types and sizes, and the frequency of collection. Exemptions from required solid waste collection may be granted by the Director. The Director may grant exemptions from the solid waste disposal requirement. The Director may determine that the solid waste created, produced, or accumulated on the premises requires additional containers, and, upon such determination, the owner shall provide them upon written notification from the Director. The additional containers shall meet the requirements set forth in Section 8.28.140. The failure to comply with the requirements of this section is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.

The owner of a single family dwelling or multifamily dwelling must by prior agreement with the collector and with the occupants of such dwellings arrange for the individual, joint, or communal use of solid waste containers thereon and for the payment of solid waste collection rates; and such owner shall be responsible for the payment of the solid waste collection rate or rates to the collector.

8.28.110 - Failure to initiate service or to provide sufficient solid waste containers Exception- Initial occupancy.

The owner of any dwelling shall start service comply with Section 8.28.100 within fifteen (15) days of occupancy of such dwelling the premises. In the absence of service start up by owner If the owner fails to do so within such time period (or such service is terminated or suspended), the Director may give the owner written notification that such service compliance with Section 8.28.100 is required. If service is not initiated the owner fails to either subscribe to solid waste collection service or obtain a self-haul permit within fifteen (15) days from the date of mailing of the notice, then the Director may require the collector to initiate and continue solid waste service for said dwelling. When in the judgment of the Director additional solid waste containers and/or collection services are required, they shall be provided by the owner upon written notification from the Director. The additional solid waste containers shall meet the requirements set forth in Section 8.28.140. the owner shall be deemed to be in violation of Section 8.28.100.

8.28.115 – Self-Haul Permit

An owner or an occupant of any premises may elect to self-haul solid waste and organics generated at the premises directly to a disposal or processing facility holding all applicable permits to accept the material. Any such owner or occupant desiring to do so as a means of satisfying the owner's obligation under Section 8.28.100 shall obtain a permit to do so from the Director. The permit shall authorize the permit holder to self-haul solid waste for a period not to exceed twelve (12) months; require the permit holder to deliver the solid waste to an approved transfer facility or disposal facility and to deliver any organics to a transfer facility, a material recovery facility, or a processing facility for processing; require the permit holder to maintain records indicating such waste was removed from the premises and disposed of and processed consistent with this section or was composted onsite; authorize city officials to inspect the

premises at reasonable periods of time; require the payment of an annual fee, as established in the city's master fee schedule, for the administrative costs to the city associated with issuing the permit and monitoring the self-hauler's operations, including components associated with periodic inspection of the premises; and include such reasonable terms and conditions as the Director may require. The Director may, after providing the permit holder notice and an opportunity to be heard, revoke the self-haul permit if he or she finds that the permit holder has not complied with the terms of the permit. Upon revocation of the self-haul permit, the Director shall order the owner to comply with Section 8.28.100. The Director shall not, for a period of twelve (12) months following the revocation, grant a self-haul permit to a person from whom a self-haul permit was revoked, and, thereafter, the Director is authorized in his or her discretion to deny, or impose additional conditions on, the issuance of a self-haul permit to a person from whom a self-haul permit was previously revoked.

8.28.120 - Frequency of solid waste collection or removal.

Collection of - The owner shall ensure that solid waste created, produced, or accumulated on the premises is either collected by the collector from each solid waste container shall be made or properly removed pursuant to a self-haul permit at least once a week or more often as may be required to adequately serve the premises. Exemptions from weekly service may be granted by the Director to those dwellings which produce minimal solid waste and whenever less frequent service will not produce a public health and safety concern. The failure to comply with the requirements of this section is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.

8.28.130 - Materials prohibited from solid waste disposal in containers.

Hazardous waste, medical waste, unacceptable waste, earth, rocks, batteries, waste, u-waste, human waste and other potentially infectious material, and liquid wastes shall not be deposited or placed in solid waste containers. Organic waste of the type produced in the preparation of food shall be drained of all moisture and completely wrapped before it is placed or put in solid waste mixed material, organic material, or recyclable material containers.

8.28.140 - Required provision of approved solid waste containers and minimum service and container capacity; container placement; residential occupants' access to services.

All solid waste - A. All mixed material, and organic material created or produced in the city shall be deposited in a container or containers approved by the Director, equipped with suitable handles and a tight-fitting cover, and watertight. Every person in possession, charge, or control of any single-family dwelling, multi-family dwelling or commercial premises shall provide a sufficient number of such containers of sufficient capacity to hold all solid waste which is mixed materials, recyclable materials, and organic materials which are created, produced, or accumulated on such premises between the time of successive collections by the collector. Such solid waste or removal under self-haul permit, to meet the minimum SFD and MFD service and container capacity requirements of this section, and to meet county and/or state requirements for organic materials capacity and/or recyclable materials capacity.

B. The minimum service and container capacity requirements are as follows:

1. Single-family dwellings: for each residential unit, mixed material container capacity of at least twenty (20) gallons.
2. Multi-family dwelling: mixed material container and collection frequency such

that the weekly capacity is equal to the number of dwelling units in the multi-family dwelling multiplied by twenty (20) gallons.

- C. Such containers shall be kept in a suitable location upon such premises, readily accessible to the collector, if backyard service is provided. Every person subscribing to curbside collection of solid waste shall place the container(s) at curbside or streetside on their collection day in a manner that does not block any driveway, sidewalk or street. Containers placed at curbside or streetside shall be timely returned to their normal storage area after the collector has emptied the container(s). By written permission of the Director, a location for such container or containers upon public property may be arranged.

~~Solid waste containers for joint or multiple use may be provided for multifamily dwellings, provided that each container is clearly marked so as to designate the dwelling which it serves. Each solid waste container for individual, joint, or multiple use shall have a capacity of not more than thirty-two (32) gallons if collected manually by the collector and shall be kept in a clean, neat, and sanitary condition at all times. The combined weight of each thirty-two (32) gallon container and its contents shall not exceed seventy-five (75) pounds.~~

- D. Owners of SFD and MFD premises shall ensure that the occupants of such premises have reasonable access to the services provided by the MM&O and RR collectors, including the collection of mixed materials, organic materials, recyclable materials, and bulky goods.

8.28.150 - Prohibition on disposal in proper placement of solid waste.

It is unlawful to dispose of place solid waste anywhere in the city except as provided for in this chapter.

8.28.155 - Prohibition on accumulation of solid waste on unoccupied property.

It is unlawful for an owner to allow solid waste to accumulate on a premises.

8.28.160 - Use of litter receptacles.

It is unlawful for any person to deposit any material from any building or yard in, on top of, or alongside the street litter receptacles placed in the sidewalk area; provided, that pedestrians and other persons using said streets shall be permitted to deposit in said receptacles miscellaneous small articles of refuse carried by them.

8.28.170 - MM&O Collector entitled to payment for services rendered right to terminate service for non-payment.

~~Pursuant to the provisions of this chapter, the collector shall be entitled to payment from owner for any services rendered. City is not responsible for any payment due collector by reason of either entering into a franchise agreement, setting rates, adjusting rates, or failing to adjust rates, except if, and to the extent it is explicitly stated in such franchise agreement. Should there be a failure by an owner to make payment for any services rendered by the collector, the means for effecting payment shall be in accordance with the procedure set forth in Sections 8.28.180 to 8.28.240, inclusive.~~

Pursuant to the provisions of this chapter, the MM&O collector shall be entitled to terminate service to a customer for non-payment for any services rendered, provided that it has first complied with all applicable provisions of this chapter and the contract. At least thirty (30) days prior to terminating the service to a premises for non-payment, the MM&O Collector shall notify the owner

in writing of its intention to do so if the account remains delinquent. The Finance Officer may specify the form and manner in which such notification shall be given.

8.28.180 - ~~Complaint of nonpayment~~ - Summary abatement of nuisance.

The Director may, as authorized by Government Code section 38773 (as it may be amended from time to time), summarily abate nuisance conditions created by the failure of an owner of an SFD or MFD premises to comply with Section 8.28.100 or Section 8.28.120 by subscribing to solid waste collection service for the property on which the nuisance conditions are maintained. The city may do so when such nuisance conditions are created as a result of contractor's termination of service for non-payment, due to failure of occupant to initiate service, or otherwise.

8.28.190 - Collection of costs—Special assessment.

In accordance with Government Code section 38773.5 (as it may be amended from time to time), the city may make the costs of subscribing to service on behalf of the owner pursuant to Section 8.28.180, including the administrative costs associated therewith, a special assessment against the property upon which the nuisance conditions are maintained. The Finance Officer shall give the owner notice of its intention to impose of the special assessment under Section 8.28.180. Such notice shall also be provided to the premises if it is different than the address identified pursuant to Section 8.28.220. A separate special assessment shall be imposed for each billing period for which the city subscribes to service on behalf of the owner, and the city may continue imposing special assessments for subsequent billing periods until the owner has complied with Section 8.28.100 or Section 8.28.120, as the case may be. The notice shall include the information required by Section 8.28.210 and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments. In all other respects, the Finance Officer may specify the form and manner in which such notice is given.

Upon the expiration of the period during which the collector has rendered service and has presented the owner with a bill for such service, if the bill has not been paid in full, the collector shall send to the owner a second request for payment. The form and content of the second request for payment sent by the collector shall be approved by the Finance Officer.

Upon the expiration of not less than ten days following the mailing of the second request for payment by the collector, if the bill remains unpaid, the collector may file with the Finance Officer a verified written complaint which shall contain the specific allegations setting forth the name or names of said owner(s), the address of the dwelling served, the period of such service, the amount due, the steps taken to secure payment, and such other information as the Finance Officer may reasonably require. Such verified written complaints shall be submitted by the collector to the Finance Officer not more than ninety (90) days following the end of the service period.

8.28.190 — Payment for services rendered and the assessment of administrative charges.

Upon receipt of the complaint filed in accordance with Section 8.28.180, the Finance Officer shall pay the amount due the collector from a revolving fund provided herein under Section 8.28.260 and owner shall be liable to the city for service charges paid, plus an administrative charge as established by the city's master fee schedule.

8.28.200 - Administrative hearing - Collector to provide opportunity to protest on delinquent charges.

The MM&O collector shall, within fifteen (15) days of declaring the charges delinquent, provide customer(s) and owner(s) of premises an opportunity to appeal, at an administrative conference conducted by the MM&O Collector, the delinquent charges asserted by the MM&O Collector.

8.28.210 – Administrative hearing on proposed special assessment.

~~After making payment to the collector for services rendered, the Finance Officer will~~ The notice of the city's intention to impose a special assessment provided under section 8.28.190 shall establish a time and place for an administrative hearing to allow the customer(s) and/or owner(s) of premises against which delinquent charges are assessed an opportunity to protest the charges in position of the special assessment. The Finance Officer shall cause notice of this hearing to be mailed to the premises and each person to whom such described property is assessed in the most recent property ownership records provided to the city by the County Assessor on the date that the Finance Officer causes notice to be mailed. Notice of this hearing may be combined with notice of the hearing before the City Council as provided herein under Section 8.28.220.

~~At the administrative hearing, the City Manager and the collector or their designated representative(s) Finance Officer will hear any protests regarding delinquent charges for services rendered. The City Manager and the collector or their designated representative(s) the proposed imposition of the special assessment. The Finance Officer and the MM&O collector shall investigate the protest as may be required and report their findings to the owner prior to the hearing before the City Council provided herein under Section 8.28.220. The City Manager or his or her designated representative may waive the service fee. The Finance Officer may require the MM&O collector to reinstate service and/or may waive the administrative costs in those cases where he or she has found that the delinquent charges have been that led to the termination of services were made improperly; or where he or she has found that the owner was improperly notified of the delinquent service fee, he or she may waive the administrative charges established under Section 8.28.190; or he or she may recommend to the City Council that the owner receive no waiver of payment of service fees and/or administrative charges- charges.~~

~~8.28.210-8.28.220 - Report of delinquent charges proposed special assessments transmitted to City Council.~~

~~Upon receipt of verified written complaints from the collector~~ Following the administrative hearing, the Finance Officer shall transmit to the City Council a report of delinquent charges the special assessments proposed to be imposed. Upon receipt by of the report, the City Council of the report, it shall fix a time, date and place for hearing the report and any protests or objections thereto.

~~8.28.220-8.28.230 - Notice of hearing on proposed special assessments.~~

~~The City Council shall cause written notice of the hearing to be mailed to the owner of the premises to which the service was rendered not less than ten (10) days prior to the date of hearing. The said written notice shall be mailed to each person to whom such premises is assessed in the most recent property ownership records provided to the city by the County Assessor on the date the City Council causes notice to be mailed.~~

~~8.28.230 - Recordation of lien for delinquent charges.~~

~~Upon confirmation of the report of delinquent charges by the City Council, a lien on the premises to which the service was rendered will be recorded with the Recorder of the county of Alameda.~~

~~8.28.240 - Payment of special assessment prior to placement on tax roll.~~

~~At any point prior to the placement of the special assessment on the tax roll, the owner may avoid the collection of the special assessment on the tax roll by paying the city the service charge for the period during which the city subscribed to service on behalf of the owner plus the city's administrative costs.~~

~~8.28.240-8.28.250 - Collection of delinquent charges by Imposition of special assessment.~~