

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9, AND SECTIONS 4.80.3070 AND 4.80.3080 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO CONFORM THE CODE TO MODIFICATIONS ASSOCIATED WITH THE NEW COMMERCIAL SOLID WASTE SYSTEM, AND TO EXISTING PRACTICE FOR THE USE OF RATEPAYER REVENUE IN THE INTEGRATED WASTE MANAGEMENT FUND, EFFECTIVE JULY 1, 2012

WHEREAS, the City Council granted exclusive franchises based geographic service districts for the collection of commercial solid waste and recyclable material from commercial, industrial and institutional waste generators on June 21, 2011; and

WHEREAS, the proposed amendment would conform changes associated with implementing the redesigned commercial solid waste system; and

WHEREAS, the proposed amendment would conform Sections 4.80.3070 and 4.80.3080 to existing practice for the use of revenue from ratepayers in the Integrated Waste Management Fund consistent with the state law requirement for special funds;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.80.3070 of Chapter 4.80 of Title 4 of the San José Municipal Code is amended to read as follows:

4.80.3070 Crediting of Interest

All interest payments and other returns on investment of moneys in the integrated waste management fund shall be deposited in and credited to the fund. The City Council may

only transfer such interest and other returns on investments to the general fund or to such other fund of the City as determined by the City Council if such transfer is consistent with state law.

SECTION 2. Section 4.80.3080 of Chapter 4.80 of Title 4 of the San José Municipal Code is amended to read as follows:

4.80.3080 Transfer of Moneys

The City Council may at any time only transfer moneys in the integrated waste management fund to the general fund or to such other fund of the City as determined by the City Council if such transfer is consistent with state law.

SECTION 3. Chapter 9.10 of Title 9 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

9.10.085 Construction and Demolition Debris

“Construction and demolition debris” means waste building materials, packaging, and rubble resulting solely from construction, remodeling, and demolition operations on pavements, houses, commercial buildings, and other structures; and rock, concrete, asphalt and dirt.

SECTION 4. Section 9.10.090 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.090 Construction and Demolition Materials Debris Collector

- A. “Construction and Demolition materials debris collector” means any person who engages in the business of collecting, transporting and/or disposing of either of the following:
1. Waste building materials, packaging, and rubble resulting solely from construction, remodeling, and demolition operations on pavements, houses, commercial buildings, and other structures authorized by a permit issued under Chapter 24.02 of the San Jose Municipal Code, and collected pursuant to a temporary service agreement of no longer than one year~~Demolished building materials or residue remaining after the demolition of any structure~~; or
 2. ~~Materials or residue generated in the grading of land either during initial site preparation or after demolition~~Rock, concrete, asphalt and dirt.
- B. Construction and Demolition materials debris collector includes persons who engage in the activities described in subsection A. incidentally to the business of demolition, construction or remodeling.

SECTION 5. Section 9.10.455 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.455 Shared Solid Waste Containers - Permit Required

- A. No person shall store residential solid waste on any residential premises other than the residential premises where the residential solid waste was generated except in accordance with a permit issued pursuant to this Section.

- B. No person shall collect garbage or recyclables from a container shared by two (2) or more multifamily dwelling premises ~~or from a container shared by two (2) or more commercial premises~~ unless the Director has issued a permit pursuant to this Section authorizing the residential premises to share that container.
- C. The Director may issue a permit to authorize two (2) or more multifamily dwelling premises to share garbage or recyclables containers if all of the following conditions are satisfied:
1. The owners of the adjacent multifamily dwelling premises, or the owners' agents, apply to the Director, in writing, for a permit to share garbage or recyclables containers.
 2. The application for the permit includes a written statement signed by the owner of each of the affected premises, or the owner's agents, designating which of the owners will assume full responsibility for the payment of all charges for solid waste collection services made available to the affected premises, designating which of the owners shall be responsible for the maintenance of the containers and the area in which the containers are placed, and designating, by address and assessor's parcel number, which of the affected premises shall be subject to the special assessment procedures and charges set forth in Part 8 of this Chapter.
 3. The Director has determined that placement of garbage or recyclable material in the shared containers can be accomplished without transporting the garbage or recyclable material on or across any public street (excluding alleys between the affected premises).

4. The Director has determined that space constraints at the multifamily dwelling premises make it difficult to site garbage or recyclables containers in such numbers and such sizes as will accommodate the volume of garbage or recyclable material generated at the premises.

~~D. The Director may issue a permit to authorize two or more commercial premises to share garbage, recyclables or rubbish containers if all of the following conditions are satisfied:~~

- ~~1. The owners of the commercial premises, or the owners' agents, apply to the Director, in writing, for a permit to share garbage, recyclables or rubbish containers. The application shall identify each of the affected premises by address and assessor's parcel number.~~
- ~~2. The application for the permit includes a written statement signed by the owner of each of the affected premises, or the owner's agents, designating which of the owners will assume full responsibility for the payment of all charges for solid waste collection services made available to the affected premises, and which of the owners shall be responsible for the maintenance of the shared containers and the area in which the shared containers are placed.~~
- ~~3. The affected commercial premises are proximately located to one another.~~
- ~~4. The Director has determined that placement of garbage, recyclable material or rubbish in the shared containers can be accomplished without transporting the garbage, recyclable material or rubbish on or across any public street (excluding alleys between the affected premises).~~
- ~~5. The Director has determined that space constraints at the commercial premises make it difficult to site garbage, recyclables or rubbish containers in such numbers and such sizes as will accommodate the volume of garbage, recyclable material or rubbish generated at the premises.~~

~~6. The Director has determined that sharing garbage, recyclables or rubbish containers by the affected commercial premises will not have an adverse effect on the flow of vehicular or pedestrian traffic.~~

DE. The Director may impose conditions on the permit issued pursuant to Subsection A. or Subsection B., as determined by the Director to be consistent with the purposes and provisions of this Chapter. Such conditions may include, but are not limited to, restrictions on the number of containers, restrictions on the size or capacity of containers, and restrictions on the placement of the containers.

EF. Upon written notice to the owners of the multifamily dwellings ~~or the owners of the commercial premises~~, or to the owners' agents, the Director may revoke any permit to share garbage, recyclables or rubbish containers given pursuant to Subsection A. or B. above if the Director finds any of the following conditions exists:

1. The ownership of any of the affected multifamily dwellings has changed.

~~2. The ownership or use of any of the affected commercial premises has changed.~~

23. The space constraints which made it difficult to site garbage, recyclables or rubbish containers sufficient to accommodate the volume of garbage, recyclable material or rubbish generated at the residential premises no longer exist.

34. The sharing of containers is not in conformance with the conditions of the permit.

- 45. The bill for collection services made available at the residential premises remains delinquent for more than ninety (90) days.
- 56. The solid waste generated or accumulated on any of the residential premises is not handled in conformance with the requirements of this Chapter.

SECTION 6. Chapter 9.10 of Title 9 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

9.10.457 Shared Solid Waste Containers – Commercial Premises Limitation

- A. No person owning or occupying a commercial premise shall share a garbage, recyclable material or rubbish container with another commercial premise if sharing the container contributes to the transportation of garbage, recyclable material or rubbish on or across any public street (excluding alleys between the affected commercial premises).
- B. No person owning or occupying a commercial premise shall share a garbage, recyclable material or rubbish container with another commercial premise if sharing the container has an adverse effect on the flow of vehicular or pedestrian traffic.

SECTION 7. Section 9.10.480 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.480 Hazardous Materials Restrictions

A. No person shall store or accumulate any hazardous materials in any container used for storage or accumulation of garbage, rubbish, recyclable materials, swill, stable matter or other solid waste.

B. The primary responsibility for proper handling of hazardous materials generated or accumulated on any premises shall be on the generator of the hazardous materials. Should the generator refuse, neglect or fail to provide for the proper handling of hazardous materials in accordance with applicable law, the owner of the premises within or upon which the hazardous materials has been generated or accumulated shall provide for the proper handling of the hazardous materials in accordance with applicable law.

SECTION 8. Section 9.10.1360 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1360 Rubbish Collection Authorization Required

A. No person shall engage in the business of collection of rubbish from commercial premises unless such person is authorized to do so pursuant to a commercial solid waste collection franchise granted to such person in accordance with Part 11 of this Chapter.

B. A person shall be deemed to be engaged in the business of rubbish collection, ~~whether or not~~when such person removes from the premises rubbish ~~which~~ whether or not the rubbish has been segregated from garbage and stored in a container separate from garbage.

C. A person shall not be deemed to be engaged in the business of rubbish collection where the removal is of the following material, or ~~of rubbish~~ is

incidental to services provided at the premises by such person in connection with any of the following:

1. ~~Landscaping or gardening services~~ Material that is generated at a commercial premise that is transported by the generator, in a vehicle owned by the company and operated by an employee of the company, for which there is no compensation to the hauler.
2. ~~Yard clean-up services, as defined in subsection D., except as provided in subsection E.~~ Rubbish that is sold or donated by the generator where the generator does not incur any cost for collection, transportation, processing, or any other service provided by the person collecting the rubbish.
3. ~~Demolition of a building or structure on the premises.~~
4. ~~Construction performed pursuant to a permit issued in accordance with this Code.~~
35. Grading performed pursuant to a permit issued in accordance with Chapter 17.04 of this Code.
46. Weed abatement or refuse abatement services performed pursuant to Chapter 9.12 of this Code.
57. An abatement action performed pursuant to Chapter 17.02 or Chapter 17.40 of this Code by a person to whom the City has awarded a contract to perform such abatement.

~~D. For the purposes of paragraph 2. of subsection C., "yard clean-up" services means removal of rubbish from residential or commercial premises where all of the following conditions are satisfied:~~

~~1. The person who transports the rubbish for disposal or processing is the person who actually enters on the customer's premises and performs the clean-up services, loads the rubbish directly to the transportation vehicle, and removes the rubbish from the premises.~~

~~2. The rubbish is not stored in a debris box, roll-off box, a container designed to be emptied by a collection vehicle, or a container provided by the person performing the services.~~

~~3. The services are provided to the particular premises on a temporary basis, not on a regular or on-going basis.~~

~~E. The exemption provided by paragraph 2. of subsection C. shall not apply to any person who, in addition to yard clean-up services, provides solid waste handling services which would otherwise be subject to the franchise requirements of this, nor shall said exemption apply to any parent corporation, subsidiary corporation, subcontractor, employee or any other affiliate of such person.~~

SECTION 9. Section 9.10.1370 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1370 Recyclables Collection Authorization Required

A. No person shall engage in the business of collection of recyclable material ~~recyclables~~ from commercial premises unless such person has a valid commercial solid waste and recyclables collection franchise granted pursuant to Part 11 of this Chapter ~~or has been authorized by a commercial solid waste generator to collect source separated recyclables from the generator's premises.~~

~~B. No person authorized to collect source separated recyclables from a commercial solid waste generator's premises shall engage in the business of collection of commingled recyclables from any premises unless such person also has a valid commercial solid waste and recyclables collection franchise granted pursuant to Part 11 of this Chapter.~~

~~C. No person authorized to collect source separated recyclables from a commercial waste generator shall commingle the source separated recyclables in the collection vehicle or in the transportation of the recyclable materials unless such person also has a valid commercial solid waste and recyclables collection franchise granted pursuant to Part 11 of this Chapter.~~

B. A person shall be deemed to be engaged in the business of collection of ~~recyclables~~ recyclable material, ~~whether or not such person receives compensation for such services, if~~ when such person removes from the premises recyclable materials which have been segregated from other solid waste and stored in a container separate from other solid waste, whether or not such person receives compensation for handling the recyclable material if such person is compensated for other services.

C. A person shall not be deemed to be engaged in the business of recyclable material collection where the removal is of the following material:

1. 1. Source separated recyclable sold or donated by the generator where the generator does not incur any cost for collection, transportation, processing or any other service provided by the person collecting the recyclable material.
2. Secure document shredding.
3. Recyclable material that is generated at a commercial premise that is transported by the generator, in a vehicle owned by the company and operated by an employee of the company, for which there is no compensation to the hauler.

SECTION 10. Chapter 9.10 of Title 9 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

9.10.1395 Recycling Containers Permitted

- A. All recycling containers used in the City shall be nonabsorbent, watertight, vector-resistant, durable, easily cleanable, and designed for safe handling.
- B. The generator shall keep and maintain all recycling containers in a place or manner that does not impede normal vehicular traffic, public transportation or pedestrian or wheelchair access to public rights-of-way except when the containers are set out for collection.
- C. The generator shall not cause or permit any recycling container to be filled in a manner which causes the container to overflow, or any offensive vapors, gases

or odors to leak from the container except when the recyclable material is being placed into or removed from the recycling container. Placing the recyclable container inside of an enclosure or providing a permanent/affixed lid are acceptable forms of covering the container. Roll-off boxes shall be covered by tarps or other covers which prevent water from intruding into the container.

D. The generator shall keep the recycling container clean and sanitary; and maintain the recycling container as may be necessary to repel and keep away flies and rodents.

E. The generator shall not cause or permit the recyclable material to be so compacted or otherwise placed, kept or accumulated in any recycling container in a manner which does not allow the contents of the recycling container to fall out, by their own weight, upon the container being lifted and turned upside down.

F. No owner of any commercial premises and no generator of recyclable material at such premises shall store or accumulate recyclable material at such premises except in a container described in Section 9.10.1390 or in a container meeting one of the following descriptions:

1. A roll-off box: A metal container that must be loaded on a collection vehicle and has the capacity to contain to forty (40) cubic yards of material.
2. A front-load container: A collection container designed to be emptied mechanically by a collection vehicle, is constructed of metal or plastic, and is one (1) to eight (8) cubic yards in size.

3. Other types: Recycling container composed of durable plastic (such as carts and woven polypropylene bags) or metal that are designed to collect solid waste.

- G. The owner of any recycling container used for the storage or accumulation of recyclable material at commercial premises shall maintain the recycling container free of graffiti, and shall remove any graffiti from such container within forty-eight (48) hours of notification by the City that there is graffiti on the container.

SECTION 11. Section 9.10.1420 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1420 Labeling Of Solid Waste Containers

Each commercial solid waste container that is provided at any commercial premises by a solid waste collector shall be labeled by the solid waste collector with the name and telephone number of the solid waste collector. Each container must include text which reads "Clean Up All Leaks/Spills Promptly." ~~Except for garbage containers described in Section 9.10.1390, each commercial solid waste container shall be labeled by the solid waste collector with the material service classification of the container.~~ All labels required by this Section shall be in letters not less than four (4) inches high.

SECTION 12. Section 9.10.1436 of Chapter 9.10 of Title 9 of the San José Municipal Code is hereby repealed.

SECTION 13. Section 9.10.1437 of Chapter 9.10 of Title 9 of the San José Municipal Code is hereby repealed.

SECTION 14. Section 9.10.1438 of Chapter 9.10 of Title 9 of the San José Municipal Code is hereby repealed.

SECTION 15. Section 9.10.1600 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1600 Purpose and Declarations

- A. It is hereby declared and determined that the business of collecting and transporting of commercial solid waste and ~~commingled-recyclables~~recyclable material generated, kept or accumulated in the City, or of disposing of such commercial solid waste and ~~commingled-recyclables~~recyclable material, is in the nature of a public service and should be regulated by the City. The use of any public street or public property in connection with such business is of great concern to the City and should be regulated by the City. Therefore, it is the purpose of this part to provide such regulation.
- B. Pursuant to the provisions of Article XIII of the City Charter, the City hereby elects to have the grant of franchises governed by this Part, and any ordinances amendatory thereof, together with the applicable provisions of the City Charter, and these provisions shall constitute the exclusive procedure applicable to the granting of franchises for the conduct of the business of collecting, transporting or disposing of commercial solid waste or ~~commingled-recyclables~~recyclable material.

SECTION 16. Section 9.10.1610 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1610 Activities Which Are Unlawful Unless Authorized

It is unlawful for any person to engage in the business of collecting, transporting or disposing of commercial solid waste or ~~commingled recyclables~~recyclable material kept, accumulated or generated in the City unless:

- A. A franchise therefor has first been granted pursuant to the provisions of this Part and such franchise is in full force and effect; and
- B. A written franchise agreement therefor has been executed between such person and the City and such agreement is in full force and effect.

SECTION 17. Section 9.10.1620 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1620 Franchise – Council Authority to Grant

The Council may and is hereby empowered to grant by ordinance to any person, whether operating under an existing franchise or not, a ~~nonexclusive~~ franchise to engage in the business of collecting, transporting, or disposing of commercial solid waste or ~~commingled recyclables~~recyclable material kept, accumulated or generated in the City.

SECTION 18. Section 9.10.1625 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1625 Franchise -- Terms and Conditions

- A. ~~All franchises granted to persons pursuant to this Part shall be nonexclusive. No provisions of this Part shall be deemed to require restricting the number of~~

~~franchises to one or any particular number, and n~~No provision of this Part shall be deemed to require the City Council to grant any franchise or franchises if the Council finds or determines that the grant of any such franchise or franchises is not for the public good.

- B. All franchises shall be subject to the terms and conditions specified in the Charter of the City of San José, to the terms and conditions specified in this Part, and to the terms and conditions specified in the franchise agreement.
- C. In granting any franchise, the City Council may prescribe such other additional terms and conditions, not in conflict with the City Charter or this Part, as in the judgment of the City Council are in the public interest.

SECTION 19. Section 9.10.1630 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1630 Restrictions on Customer Contracts

- A. Any contract between a grantee and any generator/customer for commercial solid waste collection services provided pursuant to a franchise granted under this Part shall meet the following requirements:
 - 1. Contracts entered into prior to July 1, 1999, shall provide for cancellation of the contract by the generator/customer upon not less than thirty (30) days notice in any case where:
 - a. The cancellation occurs not less than six (6) months after the initial date of the contract; and

- b. The generator/customer is not in arrears with respect to collection service charges due to the grantee through the date of the notice of cancellation.
2. Nothing herein shall prohibit the grantee from permitting cancellation of the contract by the generator/customer earlier than six (6) months after the initial date of the contract, nor prohibit the grantee from permitting cancellation of the contract even though the generator/customer is in arrears with respect to service charges.
3. Contracts entered into on or after July 1, 1999, but prior to July 2, 2004, shall provide for cancellation of the contract by the generator/customer upon not less than thirty (30) days notice in any case where:
 - a. The cancellation occurs not less than twelve (12) months after the initial date of the contract; and
 - b. The generator/customer is not in arrears with respect to collection service charges due to the grantee through the date of the notice of cancellation.
4. Nothing herein shall prohibit the grantee from permitting cancellation of the contract by the generator/customer earlier than twelve (12) months after the initial date of the contract, nor prohibit the grantee from permitting cancellation of the contract even though the generator/customer is in arrears with respect to service charges.
5. Contracts entered into on or after July 2, 2004, shall provide for cancellation of the contract by the generator/customer upon not less than

thirty (30) days notice in any case where the cancellation occurs not less than twelve (12) months after the initial date of the contract. Nothing herein shall prohibit the grantee from permitting cancellation of the contract by the generator/customer earlier than twelve (12) months after the initial date of the contract.

6. Contracts entered into on or after July 1, 2006, shall provide for cancellation of the contract by the generator/customer (a) upon not less than thirty (30) days notice in any case where the cancellation occurs not less than twelve (12) months after the initial date of the contract, or (b) without further notice in any case where the customer has provided the grantee a written request that the grantee provide solid waste collection services using a wheeled garbage disposal cart described in Section 9.10.1390 or a wheeled recyclables cart and the grantee has failed to provide such service within thirty (30) days of the date of the request. Nothing herein shall prohibit the grantee from permitting cancellation of the contract by the generator/customer earlier than twelve (12) months after the initial date of the contract.
7. The contract shall require that the grantee provide not less than sixty (60) days notice to the generator/customer before any automatic renewal of the contract may occur. The grantee shall provide such notice by personal service, with proof of service, or by United States mail, return receipt requested, to the person who signed the contract on behalf of the generator/customer or to that person's successor.
8. The contract shall provide that its continuation is dependent upon the grantee having a valid solid waste and ~~commingled-recyclables~~recyclable material collection franchise granted by the City.

- B. For the purposes of Subsection A., "initial date of the contract" means the effective date of the contract whereby the grantee first agrees to provide collection services to the generator/customer. No amendment, extension, automatic renewal, change in service level, or other modification of the contract nor any new contract shall begin a new six-month or twelve-month, as applicable, period for cancellation by the generator/customer unless the grantee has not provided collection services to the generator/ customer for a period of at least sixty (60) consecutive days.

- C. The grantee may comply with the requirements of this Section by entering into an amendment or addendum to a standard service contract where the amendment or addendum is in a form approved by the Director.

- D. The requirements of this Section do not apply to contracts for temporary debris box collection services that are not provided to the generator/customer on a regular basis.

SECTION 20. Section 9.10.1635 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1635 Franchise Categories

The City Council may, in its sole discretion, grant a commercial solid waste and ~~commingled recyclables~~recyclable material collection franchise which is limited to the collection of solid wastes or ~~commingled recyclables~~recyclable material in categories determined by the City Council and described in the ordinance granting the franchise or in the franchise agreement.

SECTION 21. Section 9.10.1690 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1690 Termination of Suspension of Franchise

A. The City Council shall have the right to terminate any franchise granted pursuant to this Part if the council finds, after a public hearing following not less than fourteen (14) ays written notice to the franchise grantee, that:

1. The grantee has failed to comply with, or to do anything required of the grantee by, applicable provisions of the City Charter, provisions of this Chapter 9.10, provisions of the ordinance granting the franchise, or provisions of the franchise agreement; or
2. Any provision of this Part becomes or is declared to be invalid and the Council expressly finds that such provision constitutes a material consideration to the grant or continuation of such franchise.

B. Any franchise granted pursuant to this Part shall automatically be suspended whenever the grantee:

1. Fails to keep in full force and effect the bonds and insurance required by the franchise agreement; or
2. Fails to keep in full force and effect any applicable licenses or permits required by federal, state or local law.

The suspension of the franchise pursuant to this subsection B. shall remain in effect until the grantee provides documentation satisfactory to the Director

demonstrating that the reason for the suspension specified above no longer exists.

C. The Director may suspend any franchise granted under this Part if the grantee:

1. Fails to submit timely reports as described in Section 9.10.1720 within fifteen (15) days after written notice from the Director that a report is delinquent; or
2. Fails to comply with the reporting requirements of subsection A. of Section 9.10.1720 and fails to correct the deficiencies in the report within fifteen (15) days after written notice from the Director of the deficiencies.

The suspension of the franchise pursuant to this subsection C. shall remain in effect for the period specified in the Director's notice unless the suspension is reversed or modified by the director or, upon appeal by the grantee, by the City Council.

D. In the event the franchise granted pursuant to this Part is terminated, the grantee shall have no right or authority to engage in commercial solid waste or ~~commingled-recyclables~~recyclable material collection, transportation or disposal operations in the City unless and until a subsequent commercial solid waste and ~~commingled-recyclables~~recyclable material collection franchise is granted to the grantee. Nothing herein shall require the City to grant any subsequent franchise to the grantee.

E. In the event the franchise granted pursuant to this Part is suspended, the grantee shall have no right or authority to engage in commercial solid waste or

~~commingled recyclables~~recyclable material collection, transportation or disposal operations in the City during the period of suspension.

F. In the event any franchise granted pursuant to this Part is terminated under subsection A. above, then within the time period specified by the City Council, the grantee shall:

1. Remove all of the grantee's, and any subcontractor's, solid waste containers and ~~commingled recyclables~~recyclable material containers from all service locations where services have been provided pursuant to such franchise; and
2. Properly dispose of any and all solid wastes and recyclables in the containers at the time of removal.

G. If the grantee fails to remove any solid waste and ~~commingled recyclables~~recyclable material container or to properly dispose of any solid waste or ~~commingled recyclables~~recyclable material in any container within the time specified by the City Council pursuant to subsection A. above, the City may remove the container and/or dispose of the solid waste or ~~recyclables~~recyclable material therein and may charge the grantee for the City's costs. The grantee shall pay to the City all of the costs incurred by the City in such removal and/or disposal within ten (10) days of the date of the City's invoice for such costs.

SECTION 22. Chapter 9.10 of Title 9 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

9.10.1695 Maximum Commercial Solid Waste and Recyclable Material Collection Service Rate

- A. The commercial solid waste and recyclable material franchisee with a franchise based on geographic service district may apply for an adjustment to the maximum commercial solid waste and recyclable material collection service rate. Any request to adjust the existing maximum service rate shall be in accordance with the application process, methodology, and other factors specified in the franchise agreement.
- B. The City Council may conduct a public hearing to confirm that the proposed maximum commercial solid waste and recyclable material collection service rates are consistent with the terms of the franchise agreement.
- C. Franchisee shall provide all customers with advance written notice of changes to the maximum commercial solid waste and recyclable material collection service rates at least thirty (30) calendar days prior to the effective date of the change.

SECTION 23. Section 9.10.1710 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1710 Franchise Fees

- A. Each person engaging in the business of collecting, transporting or disposing of commercial solid waste or ~~commingled recyclables~~recyclable material kept, accumulated or generated in the City shall pay a franchise fee to the City. The franchise fee shall be in an amount as set forth in a resolution adopted by the City Council.
- B. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the last day of the month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of the resolution adopted by the City Council pursuant to Subsection A. above.
- C. The required franchise fee shall be paid to the City's Director of Finance. Each payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the Director of Finance may require and such other information as the Director of Finance may determine is material to a determination of the amount due.
- D. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.

- E. The payment of franchise fees to the City pursuant to this part shall be in addition to any license fee or business tax prescribed by the City for the same period.

- F. If franchise fees are not paid by the grantee at the times required by this Section 9.10.1710, then in addition to the franchise fees, the grantee shall pay a late payment charge in an amount equal to ten percent (10%) of the franchise fee that was not timely paid. If the grantee fails to pay delinquent franchise fees within thirty (30) days of the date required by this Section 9.10.1710, the grantee shall pay a second late payment charge in an amount equal to ten percent (10%) of the franchise fee outstanding after such thirty (30)-day period. Such second late payment charge shall be in addition to the first late payment charge. In addition, the grantee shall pay interest on all unpaid franchise fees at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date said franchise fees were due and payable to the date actually paid.

SECTION 24. Section 9.10.1810 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1810 Combined Waste Streams

~~A. The Director may authorize a mixed use development to combine the residential solid waste and the commercial solid waste generated at the mixed use development upon the application of the owner of the mixed use development or the owner's agent.~~

A. A mixed use development may commingle the residential solid waste and commercial solid waste generated at the mixed use development.

B. The commingled waste shall be collected by the City's authorized multi-family dwelling solid waste collector if the total square footage of commercial building

space in the mixed use development is ~~not less than fifteen percent (15%) greater than ten percent (10%)~~ of the total building space ~~in the mixed use development.~~, the Director may authorize the commingling of the residential and commercial solid waste and the collection of the commingled waste by the City's authorized multi-family dwelling solid waste collector.

C. ~~The commingled waste shall be collected by a person authorized to perform commercial solid waste collection services pursuant to a franchise granted pursuant to Part 11 of this Chapter~~ if the total square footage of commercial building space in the mixed use development is at least fifteen percent (15% or more twenty percent (20%)) of the total building space ~~in the mixed use development,~~ the Director may authorize the commingling of the residential and commercial solid waste and the collection of the commingled waste by a person authorized to perform commercial solid waste collection services pursuant to a franchise granted pursuant to Part 11 of this Chapter.

D. Notwithstanding subsections B and C above, a mixed used development with twenty percent (20%) or less of the total square footage as commercial building space as of June 30, 2012 may continue to receive service from the multi-family dwelling solid waste collector.

E. ~~If the total square footage of commercial building space in the mixed use development is greater than ten percent (10%) but less than twenty percent (20%) of the total building space in the mixed use development,~~ the Director may authorize the commingling of the residential and commercial solid waste and the collection of the commingled waste by either the City's authorized multi-family dwelling solid waste collector or a person authorized to perform commercial solid waste collection services pursuant to a franchise granted pursuant to Part 11 of

~~this Chapter. Notwithstanding this Section, the Director's reserves the right to require the mixed use development to cause the collection of commingled solid waste determination of whether the commingled solid waste will~~ be collected as residential solid waste or as commercial solid waste shall be based upon the needs of the mixed used development and the effect of the solid waste collection service type on the neighboring areas.

SECTION 25. Section 9.10.2480 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.2480 California Green Building Standards Code Compliance

Notwithstanding any other provision to the contrary, a building permit applicant that documents the completion of a construction waste management plan in accordance with the California Green Building Standards Code at the following levels shall be deemed in compliance with the provisions of this Part:

- A. For building permit applications filed between January 1, 2011 and December 31, 2011, at a 60% level as determined by the Director.
- B. For building permit applications filed between January 1, 2012 and December 31, 2012, at a 65% level as determined by the Director.
- C. For building permit applications filed on or after January 1, 2013, at a ~~70~~75% level as determined by the Director.

RD:RLT
5/3/12

PASSED FOR PUBLICATION of title this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk