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ORDINANCE NO. 27725

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTIONS 9.10.455, 9.10.550, 9.10.1390, 9.10.1430, 9.10.1630, 9.10.1710, AND 9.10.1720 AND BY ADDING SECTION 9.10.1445 TO REVISE THE PROVISIONS RELATING TO COMMERCIAL SOLID WASTE MANAGEMENT REGULATIONS

WHEREAS, Chapter 9.10 of Title 9 of the San José Municipal Code sets out provisions relating solid waste management in the City of San José, including requirements related to the commercial solid waste system; and

WHEREAS, the City Council desires to amend various provisions of Chapter 9.10 to enhance the commercial solid waste management system;

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

SECTION 1. Section 9.10.455 of Chapter 9.10 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 solid waste on any premises other than the premises where the 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 or more multifamily dwelling premises or from a container shared by two or more commercial premises unless the Director has issued a permit pursuant to this Section authorizing the premises to share that container.
- C. The Director may issue a permit to authorize two 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.
- E. 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.
- F. 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.

3. 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 premises no longer exist.
4. The sharing of containers is not in conformance with the conditions of the permit.
5. The bill for collection services made available at the premises remains delinquent for more than ninety days.
6. The solid waste generated or accumulated on any of the premises is not handled in conformance with the requirements of this Chapter.

SECTION 2. Section 9.10.550 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.550 Collection and Transportation of Solid Waste.

- A. No person shall collect or transport any solid waste within or upon any public streets in the City, or anywhere in the City, except in leakproof containers or vehicles so constructed that no solid waste can leak, fall, or be blown from such container or vehicle.
- B. Vehicles or containers used to collect or transport garbage, rubbish, cannery waste, stable matter or swill shall be kept completely covered or screened at all times except when solid waste is being actually loaded or unloaded and except when the vehicles are moving along a collection route in the course of collection.
- C. Vehicles used to collect or transport garbage, rubbish, cannery waste, stable matter or swill shall be labeled with the company's name and telephone number and a unique vehicle number in letters and numbers not less than four inches high painted or stenciled on the vehicle in a location that is clearly visible to the public. Any person who applies for a commercial solid waste and recyclables collection franchise pursuant to Part 11 of this Chapter shall list all collection vehicles by type and unique vehicle number together with each vehicle's Vehicle Identification Number (VIN) in the franchise application. The franchisee shall

report any changes to the vehicles used in the performance of services in the City within seven (7) calendar days of the change.

- D. Vehicles used to collect or transport garbage, rubbish, cannery waste, stable matter or swill shall be maintained in such manner as to meet or exceed vehicle emission standards promulgated by the State of California.
- E. Collection and transportation of any solid waste shall be so conducted that no solid waste will spill out of the collecting or transporting container or vehicle. Any person collecting or transporting any solid waste shall immediately pick up all solid waste which spills or is blown from the collecting or transporting container or vehicle, and shall otherwise clean the place onto which any such solid waste was spilled or blown.
- F. No person shall transport or permit to be transported into the City any solid waste of any kind generated or accumulated outside the City, for the purpose of storing or disposing of it in the City, and no person shall store or dispose of any solid waste transported or brought into the City from outside the City, except as follows:
 - 1. Solid waste may be transported directly to a solid waste disposal facility for final deposition at such facility site.
 - 2. Solid waste may be transported directly to a solid waste transfer/processing station for the following purposes:
 - a. Transfer of the solid waste directly from smaller to larger vehicles for transport; or
 - b. Temporary storage, separation or other processing of the materials in the solid waste.
 - 3. Recyclable waste materials may be transported directly to a recycling center for the purpose of recycling.

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SECTION 3. Section 9.10.1390 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1390 Garbage Containers Permitted.

- A. Except for recyclable materials which are separated from other waste materials and placed in a recyclables container authorized by the Director and except as provided in Sections 9.10.1400, 9.10.1500 and 9.10.1510, no owner of any commercial premises and no generator of solid waste at such premises shall store or accumulate solid waste at such premises except in a container meeting one of the following descriptions:
1. A garbage disposal cart which satisfies the following requirements:
 - a. Has a close-fitting cover.
 - b. Is watertight.
 - c. Has handles or other devices to permit movement.
 - d. Is equipped with wheels or casters for easy movement.
 - e. Is free of sharp, rough or jagged surfaces or edges likely to cause injury.
 - f. Does not exceed one hundred ten gallons in capacity.
 - g. Is designed to be emptied mechanically by a collection vehicle.
 2. A garbage can which satisfies the following requirements:
 - a. Is constructed of metal, plastic or other substantial nonabsorbent material.
 - b. Is of sufficient strength and rigidity to hold without collapse all garbage and/or other refuse deposited and kept therein and shall be of sufficient strength and rigidity to prevent the can from being broken or crushed under ordinary conditions of use.
 - c. Has a close-fitting cover.
 - d. Is equipped with two attached handles or bales, one on each side of the can, of sufficient strength and size and so located to facilitate the lifting and handling of the can.
 - e. Is watertight.

- f. Is free of sharp, rough or jagged surfaces or edges likely to cause injury to persons lifting or handling the can.
 - g. Is of such shape that it can be lifted and handled without unreasonable strain by one person.
 - h. Does not exceed thirty-two gallons in capacity.
 - i. Does not, together with its contents, exceed sixty pounds in weight.
3. A standard garbage bin which satisfies the following requirements:
- a. Has a close-fitting cover.
 - b. Is watertight.
 - c. Is free of sharp, rough or jagged surfaces or edges likely to cause injury.
 - d. Is designed to be emptied mechanically by a collection vehicle.
 - e. Is kept on the premises in a hard-surfaced, accessible location.
4. A compactor unit or a separate compactor and receiving box which satisfies the requirements of subsection A.3. of this section.
- B. The owner of any container used for the storage or accumulation of solid waste at commercial premises shall maintain the 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 4. Section 9.10.1430 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1430 Hours of Collection.

- A. No solid waste or commingled recyclables shall be collected, taken, moved or transported from any commercial premises that is within three hundred (300) feet of any residential premises, except between the hours of six a.m. and six p.m. of any day. The Director may grant an exception to these collection limitations if the solid waste collector demonstrates to the satisfaction of the Director that such exception will not create noise, impediment of traffic flow, or other interference with the quiet enjoyment of the residential premises.

- B. The Director may impose restrictions on the hours of collection from commercial premises in addition to the restrictions set forth in subsection A. if the Director determines that additional time limitations are needed to mitigate an impediment to traffic flow on an interference with the quiet enjoyment of adjacent residential premises.
- C. The limitations in this section do not apply to solid waste or recyclables collection from City facilities or to solid waste or recyclables collection performed in connection with City-sponsored activities or events.

SECTION 5. 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 days notice in any case where:
 - a. The cancellation occurs not less than six 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 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 days notice in any case where:

- a. The cancellation occurs not less than twelve 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 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 days notice in any case where the cancellation occurs not less than twelve 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 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 days notice in any case where the cancellation occurs not less than twelve 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 months after the initial date of the contract.

7. The contract shall require that the grantee provide not less than sixty 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 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 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 6. 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 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 of the franchise fee that was not timely paid. If the grantee fails to pay delinquent franchise fees within thirty 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 of the franchise fee outstanding after such thirty-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 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.

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SECTION 7. Section 9.10.1720 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1720 Reports.

- A. The grantee shall file with the Director a monthly report of the quantities of commercial solid waste, commingled recyclables and source separated recyclables collected, transported and/or disposed of during the month, the number of San José customers served by the grantee during the month, and the container size(s) and frequency of collection performed for each customer, and the grantee's gross receipts for collection services provided in San José during the month. Such report shall be in such form and detail as required by the Director and, if required by the Director, shall include a report of the quantities of commercial solid waste recycled and the quantities disposed of at disposal facilities.
- B. If the monthly report required under subsection A. is not filed by the due date specified in the franchise agreement, the report shall be deemed delinquent.
- C. If the report is delinquent, the grantee shall pay to the City a delinquent report charge in the amount of one hundred dollars (\$100). If the report remains delinquent for more than fifteen days, the grantee shall pay to the City an additional delinquent report charge in the amount of one hundred dollars (\$100). If the report remains delinquent for more than thirty days, the grantee shall pay to the City a third delinquent report charge in the amount of one hundred dollars (\$100). If the report remains delinquent for more than forty-five days, the grantee shall pay to the City a fourth delinquent report charge in the amount of one hundred dollars (\$100). Such delinquent report charges shall be in addition to any franchise fees or other charges payable by the grantee for the same period of time.

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SECTION 8. Part 9 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended by adding a section to be numbered and entitled and to read as follows:

9.10.1445 Large Venue/Large Event Requirements.

- A. Any person seeking permission for the temporary or periodic use or occupancy of a public street, publicly owned site or facility, or public park within the City for a civic, commercial, recreational, or social event attended by an average of 2,000 or more persons per day of operation of the event where the event generates solid waste such as, but not limited to, paper, beverage containers, or food shall develop a waste reduction and recycling strategy and shall file a copy of the strategy with the City's Director of Environmental Services. The waste reduction and recycling strategy shall include an estimate of the amount and types of waste anticipated from the event, proposed actions to reduce the amount of waste generation related to the event, and arrangements for separation, collection and diversion from landfills of reusable and recyclable materials. Within ten calendar days after the conclusion of the event, the applicant shall submit to the Director of Environmental Services a copy of all weight or cubic yardage receipts for the solid waste and for the recyclables from the receiving waste hauler, service charity, recycling center, or other such entity receiving the materials. Alternative documentation of diversion from the landfill may be acceptable if approved by the Director of Environmental Services at the time the strategy is filed with the Director.
- B. All venue facilities such as, but not limited to, stadiums, museums, concert halls, and parks and attractions located within the City with an average attendance of more than 2,000 persons per day of operation of the venue shall prepare and adopt an annual waste prevention strategy to reduce the amount of waste material generated by facility operations, and shall file a copy of the strategy with the Director of Environmental Services on or before January 31 of each calendar year. The venue facility owner or manager shall submit an annual report to the Director of Environmental Services that lists the weight or cubic yardage of solid waste and recyclable materials generated at the venue facility during the twelve

months from September 1 of a calendar year to August 31 of the next calendar year and the type, amount (by weight or cubic yardage), and destination of all solid waste disposed and each recyclable material sold or donated during that twelve-month period.

- C. The Director of Environmental Services may exempt an event operator describe in subsection A or a venue facility owner from some of the requirements of this Section if the Director determines that the event or venue facility does not generate significant amounts of solid waste or recyclables or because of localized market conditions for a particular recyclable material.

SECTION 9. The provisions of this ordinance shall become effective on July 1, 2006.

PASSED FOR PUBLICATION of title this 9th day of May, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk