CITY COUNCIL AGENDA REPORT

MEETING DATE: DECEMBER 1, 2015 **ITEM NUMBER: PH-2**

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING SECTIONS 8-76, 8-77, AND 8-83 OF CHAPTER IV (GARBAGE, RUBBISH, AND WEEDS), OF TITLE 8 (HEALTH AND SANITATION), OF THE COSTA MESA MUNICIPAL CODE, RELATING TO MANDATORY COMMERCIAL WASTE AND ORGANICS RECYCLING**

DATE: **NOVEMBER 16, 2015**

FROM: **PUBLIC SERVICES DEPARTMENT/ADMINISTRATION**

PRESENTATION BY: **ERNESTO MUNOZ, PUBLIC SERVICES DIRECTOR**

FOR FURTHER INFORMATION CONTACT: **MIKE KOZIEL, MANAGEMENT ANALYST (714) 754-5024**

Introduce Ordinance No.15-xx (Attachment 1) to amend sections 8-76, 8-77, and 8-83 of Chapter IV (Garbage, Rubbish, and Weeds) of Title 8 for first reading; to be read by title only, and waive further reading, regarding Mandatory Commercial Waste Recycling and new requirements of Mandatory Organics Recycling required by the State of California.

BACKGROUND:

Building upon the requirements of AB341 which mandated commercial waste recycling, the State of California has now added mandatory organic recycling. As the result of the signing of AB1826 into law, the new mandatory organics recycling requirements will be phased in over several years and will help the state meet its goal to recycle 75 percent of its waste by 2020. Beginning on April 1, 2016, businesses, including commercial and industrial, and public entities such as schools, hospitals, stores, restaurants, for-profit or nonprofit organizations, and residential dwellings with 5+ units (however "multifamily" dwellings are not required to have a food waste diversion program) must recycle their organic waste over time based on the amount and type of waste the business generates on a weekly basis, with full implementation realized in 2020. AB 1826 expressly allows local governments to adopt requirements that are more stringent than the new requirements set forth in the California Public Resources Code.

Organics recycling requirements depend on the amount of organic waste generated weekly by the business (see table below). The minimum threshold of organic waste generation by businesses decreases over time to increase the proportion of the commercial sector that will be required to comply with the new organics recycling requirements in the coming years.

Date	Threshold to Arrange for Organic Waste Recycling Services
April 1, 2016	Businesses that generate 8 cubic yards of organic waste per week
January 1, 2017	Businesses that generate 4 cubic yards of organic waste per week
January 1, 2019	Businesses that generate 4 cubic yards of commercial solid waste per week

January 1, 2020	Businesses that generate 2 cubic yards of commercial solid waste per week (the 2 cubic yard requirement only takes effect if CalRecycle determines that statewide disposal of organic waste in 2020 has not been reduced by 50% of 2014 levels).

ANALYSIS:

The goal of the mandatory commercial organics recycling law (AB 1826) is to help California achieve aggressive recycling and greenhouse gas emission goals. California landfills take in about 30 million tons of waste each year, of which more than 30% is organic. The State has determined that these organics should be composted or used to produce renewable energy rather than going into landfills. Greenhouse gas emissions resulting from the decomposition of organic waste in landfills have been identified as a significant source of emissions contributing to global climate change.

The City of Costa Mesa has in place an excellent mechanism for implementing this mandate. The City operates under a non-exclusive waste hauling franchise that licenses permitted waste hauling firms to provide solid waste collection and recycling services to commercial and multi-family dwellings. It shall be the responsibility of the City of Costa Mesa authorized Waste Haulers to comply with these new State mandates in order to operate under their annual permits. The proposed amendments to Chapter IV of Title 8 (Attachment 2) will assure that the haulers comply with these regulations, as shown in the "strike and bold" version of the ordinance (Attachment 3).

ALTERNATIVES CONSIDERED:

An alternative to this City Council action would be to reject the amendments, potentially exposing the City to fines of up to $10,000 per day for non-compliance. The Council could also consider a separate new franchise system for exclusively processing the organics at an unknown but potentially significant administrative and business cost.

FISCAL REVIEW:

Section 2, Chapter 12.9 of AB1620 Recycling of Organic Waste states that *"no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code."*

The City's authorized waste haulers set their charges based upon the competitive market (a benefit to clients of the non-exclusive franchise system), and therefore their costs of compliance with the program will likely be passed on to their clients. The fiscal impact to the City is additional unknown administrative cost and time of implementing, monitoring, and reporting on the program. Increased costs to the City will be offset by additional revenues from increased gross receipts by the authorized haulers.

LEGAL REVIEW:

The City attorney has reviewed this report and has prepared the attached ordinance as amended.

CONCLUSION:

Assembly Bill 1826 requires that commencing April 1, 2016, the City implement an organic recycling program. Adoption of the proposed ordinance as amended would result in clarifying the language of the current ordinance while, at the same time, ensuring compliance with State law by implementing its requirements. Therefore, staff requests the City Council introduce Ordinance Number 15-xx to amend sections 8-76, 8-77, and 8-83 of Chapter IV (Garbage, Rubbish, and Weeds), of Title 8, for first reading; to be read by title only, and waive further reading, regarding Mandatory Commercial Waste Recycling and new requirements of Mandatory Organics Recycling.

ERNESTO MUNOZ
Public Services Director

MIKE KOZIEL
Management Analyst

DISTRIBUTION: Chief Executive Officer
Assistant Chief Executive Officer
City Attorney
City Clerk Division
Staff
File

ATTACHMENTS:
1. Ordinance No. 15-
2. Amended Code Sections
3. Strike and Bold Version of the Amended Code Sections

ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO AMEND TITLE 8 OF THE COSTA MESA MUNICIPAL CODE BY AMENDING SECTIONS 8-76 (DEFINITIONS), 8-77 (PERMIT) AND 8-83 (REGULATIONS) OF ARTICLE I (SOLID WASTE COLLECTION) OF CHAPTER IV (GARBAGE, RUBBISH AND WEEDS)

THE CITY COUNCIL OF THE CITY OF COSTA MESA MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THIS ORDINANCE:

WHEREAS, Assembly Bill 1826 requires that commencing April 1, 2016, the City require a business that generates a specified amount of organic waste per week to arrange for recycling services for that organic waste in a specified manner;

WHEREAS, Assembly Bill 1826 decreases the amount of organic waste under which a business would be subject to those requirements from 8 cubic yards or more to 4 cubic yards or more on January 1, 2017;

WHEREAS, Assembly Bill 1826 also requires a business that generates 4 cubic yards or more of commercial solid waste per week, on and after January 1, 2019, to arrange for organic waste recycling services and, if the Department of Resources Recycling and Recovery makes a specified determination, would decrease that amount to 2 cubic yards, on or after January 1, 2020;

WHEREAS, Assembly Bill 1826 requires that the City, on and after January 1, 2016, implement an organic waste recycling program to divert organic waste from the businesses subject to this act;

WHEREAS, Assembly Bill 1826 will require the City to report to the Department of Resources Recycling and Recovery on its progress in implementing the organic waste recycling program, and the department would be required to review whether a jurisdiction is in compliance with this act;

WHEREAS, Assembly Bill 1826 authorizes the City to charge and collect a fee from an organic waste generator to recover the local governmental agency's costs incurred in complying with this act; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

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

Section 1: Sections 8-76, 8-77 and 8-83 of Article I of Chapter IV of Title 8 are amended to add sub-section (x) to section 8-76, sub-section (e)(5)(f) to section 8-77 and sub-sections (i), (j), (k) and (l) to section 8-83, to read as follows:

Sec. 8-76. – Definitions.

The following terms as used in this article shall, unless the context already indicates otherwise, have the respective meanings herein set forth:

(x) Organic Waste. Organic material including food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed with food waste.

Sec. 8-77. - Permit.

(e) Each permit application shall be filed with the public services department and shall include the following information:

(5) A written source reduction and recycling plan with details and time frame for implementation on how the permittee will provide the programs to its customers as required by the City of Costa Mesa Source Reduction and Recycling Element which include but are not limited to all of the following:

f. Organic waste recycling programs. In order to comply with the requirements of Chapter 12.9 of Part 3 of Division 30 of the Public Resources Code, the director of public services may require a permit applicant, seeking an A Tier hauler designation, to demonstrate their ability to provide organics recycling services as a condition of permit issuance.

Sec. 8-83. - Regulations.

(i) All businesses as defined by Public Resources Code section 42649.1 generating four-cubic-yards of trash per week, and all multi-family properties of 5 units or more, must arrange for the collection and recycling of solid waste as follows:

(1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials with a permittee.

(2) Subscribe to a recycling service with a permittee that may include mixed waste processing that yields diversion results comparable to source separation.

(j) On or before April 1, 2016, all businesses as defined by Public Resources Code section 42649.8 et seq., including multi-family residential dwellings of 5 or more units, must arrange for recycling services specifically for the organic waste that they generate in the manner specified in subsection k. as follows:

(1) On and after April 1, 2016, a business that generates eight cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste;

(2) On and after January 1, 2017, a business that generates four cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste;
(3) On and after January 1, 2019, a business that generates four cubic yards or more of commercial solid waste, as defined in Public Resources Code section 42649.1, per week, shall arrange for recycling services specifically for organic waste; and
(4) On or after January 1, 2020, if the state Department of Resources Recycling and Recovery determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste shall arrange for the organic waste recycling services specifically for organic waste, unless the Department of Resources Recycling and Recovery determines that this requirement will not result in significant additional reductions of organics disposal.

(k) All businesses as defined by Public Resources Code section 42649.8 et seq. including multi-family residential dwellings of 5 or more units located within the city shall do one or more of the following, except that a multifamily residential dwelling is not required to arrange for the organic waste recycling for food waste:

(1) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste with a permittee that recycles organic waste;
(2) Recycle its organic waste onsite or self-haul its own organic waste for recycling;
(3) Subscribe to a mixed waste processing service from a permittee that recycles organic waste; and/or

(4) Donate or sell organic waste to a person or entity authorized by law to receive such waste.

(l) Property management companies that contract for trash service for any commercial, institutional, or multi-family properties subject to this article are required to contract or otherwise make available recycling services to comply with this section.

Section 2: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 3: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the

validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 4: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

Adopted this _____ day of _____, 2015

_____
Stephen Mensinger, Mayor

ATTEST:

_____
Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF COSTA MESA)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2015, and thereafter at the regular meeting of said City Council duly held on the _____ day of _____, 2015, was duly passed and adopted by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Brenda Green
City Clerk of the City of Costa Mesa

CHAPTER IV. - GARBAGE, RUBBISH AND WEEDS[4]

Footnotes:

--- (4) ---

Cross reference— Transporting garbage in parks, § 12-29; rubbish in parks, § 12-51.

ARTICLE 1. - SOLID WASTE COLLECTION[5]

Footnotes:

--- (5) —

Editor's note—Section 2 of Ord. No. 92-31, adopted Jan. 18, 1993, amended Art. 1 of Ch. IV, specifically §§ 8-76—8-84, to read as herein set out. Formerly, §§ 8-76—8-84 pertained to garbage, rubbish, and weeds generally and derived from §§ 5200—5206 and § 5210 of the 1960 Code. Section 3 of Ord. No. 92-31 renumbered § 8-89 as § 8-85. Formerly § 8-89 derived from § 5211 of the 1960 Code and § 3 of Ord. No. 73-13, adopted April 16, 1973. Also, § 4 of Ord. No. 92-31 repealed §§ 8-86—8-89, which derived from §§ 5207—5209 of the 1960 Code.

Sec. 8-76. - Definitions.

The following terms as used in this article shall, unless the context already indicates otherwise, have the respective meanings herein set forth:

(a) Collection: The operation of gathering together and transporting solid waste to the point of disposal.

(b) County: County of Orange.

(c) Commercial units: Any commercial business establishment including, but not limited to, hotels, motels, offices and professional buildings, and retail establishments of all kinds, including supermarkets, filling stations, department and variety stores.

(d) Disposal: The complete operation of treating and disposing of the accumulations of refuse and of the product or residue arising from such treatment.

(e) Disposal station: A facility established, maintained and operated by the City or the County for the disposal of refuse.

(f) Garbage: Solid waste as defined in California Public Resources Code Sections 40191 and 49503.

(g) Multifamily residential units: A permanent building containing two (2) or more dwelling units including, but not limited to, mobile home parks.

(h) Hazardous waste:

(1) All waste defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act (42 USC 3251 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.), and all future amendments thereto, or regulations promulgated thereunder; and

(2) All waste defined in California Public Resources Code Section 40141 or characterized as hazardous waste by the Principal agencies of the State of California (including without limitation the Department of Health Services and the California Waste Management Board) having jurisdiction over hazardous waste generated by facilities within such state; provided that the term "hazardous waste":

a. Is intended to mean and include those substances which are not normally expected to be disposed of by generally accepted sanitary landfill disposal methods;

b. Shall include radioactive wastes; and

c. Shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste.

(i) Industrial units: Any business establishment engaged in manufacturing, warehousing, construction, and/or demolition.

(j) Infectious waste: Solid waste capable of producing an infection or pertaining to or characterized by the presence of pathogens or medical waste as regulated by the Medical Waste Management Act (California Health and Safety Code Section 25015 et seq.). It includes but is not limited to certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals, medical testing labs, and any waste which includes animal wastes or parts from slaughterhouses or rendering plants.

(k) Intermediate processing facility: A solid waste transfer or processing station or facility as defined in California Public Resources Code Section 40200.

(l) Material recovery facility: A solid waste facility where source-separated recyclables are processed and recovered.

(m) Permittee: Any person or solid waste enterprise who collects, hauls or disposes of any form of solid waste, hazardous waste or infectious waste for compensation pursuant to a permit issued under this section.

(n) Public highway: Any public street, alley, road, public place or highway open to and used by the traveling public and not used as a private right-of-way.

(o) Recycling: The process of collecting, sorting, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream as defined in California Public Resources Code Section 40180.

(p) Recyclable material: Solid waste material that through a process of collecting, sorting, cleansing, treating and reconstituting is returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

(q) Refuse. Solid waste as defined in California Public Resources Code Sections 40191 and 49503.

(r) Residential units: All those dwelling units not included in the definition of multifamily residential units unless otherwise designated by the city.

(s) Scavenge. The unauthorized removal of any recyclable materials as defined by California Public Resources Code Sections 41950 and 41951 or solid waste without a permit under this article.

(t) Solid waste. All solid waste as defined in California Public Resources Code Sections 40191 and 49503.

(u) Solid waste enterprise. A solid waste enterprise as defined in California Public Resources Code Section 49504.

(v) Solid waste handling services. A solid waste handling service as defined in California Public Resources Code Section 49505.

(w) Transfer station. A solid waste transfer or processing station or facility as defined in California Public Resources Code Section 40200.

(x) Organic Waste. Organic material including food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed with food waste.

(Ord. No. 92-31, § 2, 1-18-93)

Sec. 8-77. - Permit.

(a) No person shall collect any solid waste, hazardous waste or infectious waste upon, along or across any public highway in the city from any commercial, industrial or multifamily residential units, or residential units without first applying for and receiving all permits required from the city. In addition to the permit required under this article, a business license must be obtained prior to doing business within the city, and a separate vehicle permit for each and every vehicle used for collecting solid waste, hazardous waste or infectious waste and setting of containers within the city right-of-way. The permittee shall place each permit issued pursuant to this article in the lower right front window of the vehicle so that it is clearly visible from the street.

(b) The city shall develop and implement a procedure for evaluating the performance of any and all permittees operating under the provisions of this article. Permitted haulers shall submit quarterly reports to the director of public services from a state-or county-certified weighing facility documenting gross tonnage collected and net tonnage diverted except that tonnage for bins exclusively used for industrial construction or demolition may be certified and documented to the city by the permittee based on volume or other types of receipts from the receiving facility. The city reserves the right to randomly select trucks to have weighed by a state-certified facility to ensure compliance. All costs for random weight measurements will be borne by the permittee. Such a facility must have the ability to process recyclable materials in preparation for end-user markets. Failure to provide said reports within thirty (30) days will result in suspension of the permit until tonnage reporting is submitted to the director of public services. If said reports are not submitted within forty-five (45) days of the end of each quarter, the hauler's permit in effect at the time of the violation will be revoked as provided in section 8-79. Failure to meet minimum diversion rates will result in the revocation of the permit as provided in section 8-79.

(c) Any person or solid waste enterprise who is issued a permit pursuant to this article shall comply with all of the regulations in this article including but not limited to the source reduction and recycling provisions of section 8-84.

(d) Any person or solid waste enterprise desiring to obtain a permit to remove or convey any solid waste, hazardous waste or infectious waste upon or along any public highway within the city from any commercial, industrial or residential multifamily unit(s), or residential unit(s), shall sign and file an application with the city and pay a permit application fee established by resolution of the city council. To the extent permitted by law, the information submitted in the application shall be kept confidential.

(e) Each permit application shall be filed with the public services department and shall include the following information:

(1) The name and address of the applicant.

(2) The type of solid waste, hazardous waste or infectious waste to be collected in each of the applicable areas: Industrial commercial, multiple-family residential, and/or residential.

(3) The approximate amount of tonnage of solid waste to be collected in each of the applicable areas to be served by permittee: Industrial, commercial, multiple-family residential and/or residential.

(4) For hazardous waste and infectious waste, written proof that the person or solid waste enterprise has obtained all necessary permits from the county, State of California and federal agencies for the collection of such waste and has insurance coverage for the transport and disposal of such waste.

(5) A written source reduction and recycling plan with details and time frame for implementation on how the permittee will provide the programs to its customers as required by the City of Costa Mesa Source Reduction and Recycling Element which include but are not limited to all of the following:

a. Reduction of solid waste to maintain a fifty (50) per cent diversion rate through source reduction, recycling and composting.

b. Economic incentives to achieve the diversion rates set forth in subparagraph (5)a.

c. Technical, instructional, promotional, and educational programs to achieve the diversion rates set forth in subparagraph (5)a.

d. Composting programs to facilitate the achievement of the diversion rates set forth in subparagraph (5)a.

e. Special waste programs.

f. Organic waste recycling programs. In order to comply with the requirements of Chapter 12.9 of Part 3 of Division 30 of the Public Resources Code, the director of public services may require a permit applicant, seeking an A Tier hauler designation, to demonstrate their ability to provide organics recycling services as a condition of permit issuance.

(6) Any other information or additional financial information from the permittee, including, but not limited to, the right to audit financial records, or require a performance bond, or other suitable evidence of financial responsibility, if at any time such information is found to be necessary by the city council. The permittee will provide a certified copy of the permittee's last fiscal year's financial report, audited by a certified public accountant. All financial information contained in the permit application made to the city pursuant to this article shall be deemed to be confidential and shall be retained by the city for its use and, under no circumstances, will such information be released to anyone other than the permittee without the consent of the permittee.

(7) The Costa Mesa Sanitary District ("CMSD") will continue its franchise for all single-family residential and multi-family residential receiving curbside service. No other permittee will be allowed to operate in areas governed by the CMSD.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 93-7, §§ 1, 2, 2-16-93; Ord. No. 04-12, § 1(B), 11-15-04)

Sec. 8-78. - Issuance or denial of permit.

(a) When an application has been made to the city for a permit pursuant to this article, it shall be the duty of the director of the public services department to consider the matter; and he or she shall have the right to grant, condition or deny the permit request, and such decision shall be subject to an appeal to the city council pursuant to Chapter IX of Title 2 of this Code. In granting, conditioning or denying the permit request, the director of public services and the city council may take into consideration factors, including, but not limited to, the following:

(1) The ability of the permittee to comply with the solid waste handling service standards enumerated in this article.

(2) The ability of the permittee to comply with the equipment standards enumerated in this article.

(3) The ability of the permittee to comply with the provisions regarding insurance or bonds enumerated in this article.

(4) The ability of the permittee to provide programs and comply with the City of Costa Mesa Source Reduction and Recycling Element and implement the source reduction and recycling plan proposed by the permittee pursuant to paragraph (5) of subsection (e) of section 8-77.

(b) The decision by the city council on a permit application shall be final.

(c) No permit granted pursuant to this article shall be assigned or transferred without the consent of the director of public services. The term of the permit shall be for a period of seven (7) years, provided that on each anniversary date of a permit it shall be automatically extended for one (1) additional year so that the term remains seven (7) years unless at least sixty (60) days prior to the anniversary date either the city or permittee notifies the other in writing that the permit will not be renewed in which case the term shall not be extended for an additional year and will have only six (6) years remaining and shall not be automatically extended thereafter. Nothing in this subdivision shall prevent the city from terminating a permit before the end of its term pursuant to the provisions of section 8-79. No permit granted pursuant to this article shall limit the right of the city to grant an exclusive or nonexclusive franchise for solid waste handling services in the city. A permit issued under this article shall not grant the permittee rights under California Public Resources Code Section 49520, where at the time the permit is granted the permittee did not have a right to continue service under such section.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(C), 11-15-04)

Sec. 8-79. - Revocation of permit.

(a) In the event that any person or solid waste enterprise holding a permit to collect solid waste, hazardous waste, or infectious waste upon or along any public highway within the city from any commercial, industrial, or multifamily residential unit(s), or residential unit(s) violates any of the conditions of such permit, the requirements of section 8-87, the provisions of this article, or any other ordinance, statute, or regulation relating to the collection, storage, or disposal of solid waste, hazardous waste, or infectious waste, or collects such solid waste in an unlawful, improper, or unsanitary manner, the director of public services may revoke such permit issued to such person or enterprise as provided by this section.

(b) The director of public services may revoke a permit by issuing a written order to the permittee and the order shall state the grounds for such revocation, and that if proof of compliance is not provided to the director of public services within thirty (30) calendar days from the date of the written order, the permit will be revoked forty-five (45) calendar days from the date the written order was mailed. The order shall be mailed by certified mail to the permittee. The written order shall be subject to an appeal to the city council pursuant to Chapter IX of Title 2 of this Code. Upon revocation of a permit, the permittee shall cease all services subject to the permit within seventy-five (75) calendar days from the date the order is mailed. The director may adopt regulations to implement the provisions of this section.

(c) Regarding the failure of a permittee to comply with the requirements of section 8-84, including, but not limited to, the maintenance of the fifty (50) per cent diversion mandate, as required in its source reduction and recycling plan, the following procedure will be followed:

(1) The director will determine whether the permittee has made a good faith effort to comply with the conditions of the permit and the requirements of this article. The director will consider evidence submitted by the permittee concerning this matter and the permittee has the burden of establishing that it has made reasonable and feasible good faith efforts to achieve compliance. Evidence to be considered on this issue includes, but is not limited to, how close to compliance the particular deficiency is, the efforts the permittee has taken to meet the requirement, the expense required to provide the permittee with the means for compliance, the results of similar permittees in meeting the requirement, the availability of new technologies which the permittee could utilize to satisfy the requirement, the plans submitted by the permittee showing what steps it plans to take to enable it to fully comply with the requirement and the time that will take, whether permittee has already taken reasonable steps to alter its operations in time to meet the requirement, and what impact the permittee's failure has on the city's overall compliance with the state requirements for solid waste reduction and diversion. The permittee's good faith efforts must conform to any guidelines established by the city and/or the state in this regard.

(2) The provisions of this subsection authorizing the director to consider the good faith efforts of a permittee shall only be applicable so long as the state authorizes and grants a comparable good faith exception concerning the city's responsibilities under state law.

(3) If the director determines that a good faith effort has been made by the permittee, the director may decide not to revoke the permit. If the permit is not revoked, the director may impose new conditions to the permit, such as: (i) the permittee must prepare a full compliance plan to show how it intends to meet the diversion requirement, (ii) the plan must be submitted within 30 days and approved by the director, (iii) the permittee must comply with that plan, or (iv) any other conditions that the director concludes are appropriate and will help meet the requirements of state law and the city ordinance.

(4) If a permit is not revoked because the director determines that a good faith effort had been made, the permit revocation process may be commenced again at any time the director determines new grounds therefor exists, including, but not limited to, noncompliance with any new conditions placed upon the permit at the time the good faith determination was made.

(d) If a permit is revoked, no permit shall be thereafter granted to such person to collect solid waste, hazardous waste or infectious waste in the city until such time as the permittee can prove the ability to comply with this article.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 99-1, § 1, 2-16-99; Ord. No. 99-12, § 1, 7-19-99; Ord. No. 04-12, § 1(D), (E), 11-15-04)

Sec. 8-80. - Equipment requirements.

(a) Vehicles used by the permittee for solid waste handling services shall be approved by the director of public services or his or her designee and shall be in safe and operable condition. Vehicles shall be painted with the firm name on each side at a minimum of three-inch-high letters. No materials shall leak, fall or be spilled from any such vehicle or bin attached thereto. Vehicles shall be equipped with shovels and brooms to clean up spillage. Equipment bodies shall be of metal and watertight. Vehicles must pass city approved inspections and meet applicable air quality and vehicle emissions standards. Truck bodies shall be closed when used to transport solid waste, hazardous waste or infectious waste contents to places of disposal or separation for recycling. The maximum gross weight imposed by the wheels of any one (1) axle shall not exceed twenty thousand (20,000) pounds. Vehicles shall be operated in such a manner as to minimize their exterior noise levels in the city. Vehicles must conform to the California Vehicle Code and all other applicable laws and are subject to inspection at any time by the city or the California Highway Patrol.

(b) Each vehicle required to have a permit, pursuant to this article, must pass a California Highway Patrol Biannual Inspection of Terminals for each vehicle or other inspection approved by the director of public services. Proof of Inspection is required to be submitted to the public services department twice per year. Failure to pass the vehicle inspection may result in denial or revocation of the permit.

(c) Each container of a residential unit utilizing curbside service shall comply with the requirements of the CMSD.

(d) Containers to be used by industrial and commercial units and multifamily units not utilizing curbside service shall be provided by the permittee. Containers shall have the name and the phone number of the permittee clearly visible on two (2) sides in letters not less than three (3) inches in height. Containers shall be of a design and size to contain all the contents therein in such manner as to promote good housekeeping conditions. The owner of such containers shall maintain them in a safe and sanitary condition. The director of public services shall have the authority to approve new containers at any time.

(e) All permittees shall maintain their containers to present a well-kept appearance and ensure that the container area is left clean of debris and refuse after pickup or delivery. Users shall be responsible for the cleanliness of the containers and sanitary conditions of the surrounding area between services.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(F), 11-15-04)

Sec. 8-81. - Service standards.

(a) In all areas of the city pickup shall be at least once per week. Pickups shall not be made between the hours of 8:00 p.m. and 7:00 a.m., unless otherwise approved by the director of public services or CMSD. No collection will be allowed on Sundays or between the hours of 8:00 p.m. and 7:00 a.m. on weekdays or weekends unless requested and specifically approved by the director of public services. In the event of a holiday, pickups shall be completed one (1) day later than the regularly scheduled collection day. The following are considered to be holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day.

(b) The schedule for collection from commercial and industrial units shall be determined by the permittee and occupants of such units and subject to review by the director of public services.

(c) The permittee shall provide all multi-family residential units a container or containers that have a minimum storage capacity of one-half (½) cubic yard of refuse per dwelling unit per week. The minimum service standards are subject to review by the director of public services.

(d) All collections of refuse from multi-family residential units of five (5) or more dwelling units shall be made from private property except where the director of public services has made a written determination that there is a physical limitation or documented safety issue(s) that prevents collection service from private property.

(e) The permittee shall be allowed, unless specifically forbidden to do so by the owners or occupants, to enter private courts or places or other private property to make collections under a contract or permit, except in drive-in eating places and drive-in markets where refuse is kept in a paved service yard and where the same shall be picked up from such service yard when deposited there.

(f) The permittee shall maintain a place of business at some fixed place within the county and shall maintain a telephone, listed in the telephone directory in his own name or in the firm name by which he is most commonly known. At all times during the hours between 8:00 a.m. and 5:00 p.m. of each day upon which collections are made, said office must be staffed to receive complaints regarding collection. An emergency number shall be made available to city hall for the hours between 5:00 p.m. and 8:00 a.m. and for days upon which collections are not made.

(g) If for some reason refuse is not collected, the permittee will leave a tag at least two (2) inches by six (6) inches explaining why on the receptacle or bundle. The condition referred to on said tag must be corrected within one (1) week. The permittee shall be required to maintain daily logs of all tags issued stating the location, and the reason for refusing collection.

(h) The permittee shall, in person or by his agent, visit the office of the director of public services at such times as the director of public services shall designate for the purpose of discussing any matters or subject relating to, and any complaints which may concern the performance of his or her permit. The permittee shall report back to the director of public services within the next working day regarding any action or procedure taken with reference to complaints or other matters discussed.

(i) In the event of a natural disaster, earthquake, storm, fire or other extraordinary occurrence that may tend to generate abnormal amounts of refuse, the city may require additional collection upon agreement between the city manager and the permittee.

(j) In the event that service is interrupted due to labor disputes or other events impacting the health, safety and welfare of the citizens of the city, the city shall have the right to take over and operate any and all equipment of the permittee in order to continue service pursuant to the terms of the contract or permit if it is determined by the city manager to be necessary to the health, safety and welfare of the citizens of the city. If necessary, in the judgment of the city manager, city employees may operate said equipment.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 00-17, §§ 1—3, 11-20-00)

Sec. 8-82. - Insurance and bonds.

(a) The permittee shall at all times keep fully insured, a his or her own expense, all persons employed by him, in connection with the contract as required by Workers' Compensation Insurance and Safety Act of the state, and shall hold the city free and harmless from all liabilities that may arise by reason on the injuries to any employee of the permittee who are injured while performing any work or labor necessary to carry out the provisions of a contract or permit. The permittee, during the life of the permit, shall keep on file with the city clerk evidence that the permittee is fully and properly insured as required by such act.

(b) If necessary, in the judgment of city council, the permittee shall deposit with the city a cash deposit or a performance bond guaranteeing the performance of any permit which he may have with the city. The cash deposit or bond shall be in the amount and in a form approved by the city attorney.

(c) The permittee shall indemnify the city, its officers and employees, against, and hold the city, its officers and employees, harmless from, any claims asserted against the permittee on account of the negligence of the permittee or its employees, by employees of the permittee or by third parties, arising out of personal injuries or property damage, including hazardous material clean-up costs and penalties, suffered by any such persons on account of the operations of the permittee hereunder. The permittee shall provide and maintain in effect, bodily injury, property damage and environmental liability insurance with limits in an amount approved by the city attorney and as set forth in the permit granted. The permittee shall have the city, its officials and employees named as an additional insured under each of the aforementioned policies, and such policies shall be endorsed to require thirty (30) days written notice to the city prior to any cancellation thereof. The permittee shall furnish to the city certificates evidencing that the insurance required hereunder is in effect and such certificates shall be in a form approved by the city's risk management office.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(G), 11-15-04)

Sec. 8-83. - Regulations.

(a) It shall be unlawful for any person to place, deposit, dump or cause to be placed, deposited or dumped any solid waste, hazardous waste or infectious waste in or upon any private property or in or upon any public property which the public is admitted by easement or license without the consent of the owner, or in or upon any public highway, street, alley, sidewalk, gutter, parkway or upon any private road, alley, sidewalk, gutter or driveway in common use, or upon any public property other than property designated or set aside as a disposal station for such purpose by resolution of the city council or county board of supervisors.

(b) It shall be unlawful for any person to place, deposit or dump solid waste, hazardous waste or infectious waste of any kind whatsoever upon any private or public property within a distance of one thousand (1,000) feet from any public highway in the city, or within a distance of five hundred (500) feet from any established residence or dwelling house within the city, or to cause or suffer or permit such solid waste, hazardous waste or infectious waste to be placed, deposited or dumped upon any public or private property within a distance of one thousand (1,000) feet of any public highway or within a distance of five hundred (500) feet of any established residence or dwelling house in the city, without first having obtained a use permit pursuant to the zoning laws of the city, county, and State of California, or pursuant to any other zoning law that may be hereafter adopted in the place and stead of said zoning laws of the city. The provisions of this subsection shall not apply to solid waste, hazardous waste or infectious waste placed into a container for pickup by a solid waste enterprise operating pursuant to a permit issued under this article.

(c) No person shall burn any solid waste, hazardous waste or infectious waste within the city without having first complied with all rules and regulations of the city, the county, the South Coast Air Quality Management District and the state.

(d) No person shall scavenge or bury any solid waste, hazardous waste or infectious waste within the city.

(e) Special arrangements must be made and permits issued by the county, State of California, and federal agencies for the disposal of any of the following items: Ammunition; explosives; industrial waste; chemicals; infectious; hazardous and radioactive waste; acids; drugs; medicines; human feces; unwrapped animal feces; and items which are too large for the collection equipment or which may damage the collection machinery such as large pieces of metal, machine parts, logs and tree stumps.

(f) Branches of trees, hedges, etc., shall be cut in lengths of not over four (4) feet and placed in containers or tied into bundles not exceeding fifty (50) pounds. All vacuum cleaner dust sweepings or ashes shall be wrapped and placed in the container. Newspapers and magazines may be bundled in bundles not exceeding fifty (50) pounds maximum. All metal containers may be placed in an enclosed container or wrapped in bundles not exceeding fifty (50) pounds maximum. In areas of curbside refuse collection, the requirements of this subsection are superseded by any requirements of the CMSD.

(g) It shall be unlawful for a person or solid waste enterprise to commingle solid waste collected from within the jurisdiction of the City of Costa Mesa with solid waste collected from any other jurisdiction. A violation of this subsection shall result in the revocation of the permit pursuant to section 8-79.

(h) For any type of solid waste collection in the city, it shall be unlawful for any person to use the services offered by a person, service, or enterprise that has not obtained all the required permits from the city pursuant to this article.

(i) All businesses as defined by Public Resources Code section 42649.1 generating four-cubic-yards of trash per week, and all multi-family properties of 5 units or more, must arrange for the collection and recycling of solid waste as follows:

(1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials with a permittee.

(2) Subscribe to a recycling service with a permittee that may include mixed waste processing that yields diversion results comparable to source separation.

(j) On or before April 1, 2016, all businesses as defined by Public Resources Code section 42649.8 eq seq., including multi—family residential dwellings of 5 or more units, must arrange for recycling services specifically for the organic waste that they generate in the manner specified in subsection k. as follows:

(1) On and after April 1, 2016, a business that generates eight cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste;

(2) On and after January 1, 2017, a business that generates four cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste;

(3) On and after January 1, 2019, a business that generates four cubic yards or more of commercial solid waste, as defined in Public Resources Code section 42649.1, per week, shall arrange for recycling services specifically for organic waste; and

(4) On or after January 1, 2020, if the state Department of Resources Recycling and Recovery determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste shall arrange for the organic waste recycling services specifically for organic waste, unless the Department of Resources Recycling and Recovery determines that this requirement will not result in significant additional reductions of organics disposal.

(k) All businesses as defined by Public Resources Code section 42649.8 et seq. including multi-family residential dwellings of 5 or more units located within the city shall do one or more of the following, except that a multifamily residential dwelling is not required to arrange for the organic waste recycling for food waste:

(1) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste with a permittee that recycles organic waste;

(2) Recycle its organic waste onsite or self-haul its own organic waste for recycling;

(3) Subscribe to a mixed waste processing service from a permittee that recycles organic waste; and/or

(4) Donate or sell organic waste to a person or entity authorized by law to receive such waste.

(l) Property management companies that contract for trash service for any commercial, institutional, or multi-family properties subject to this article are required to contract or otherwise make available recycling services to comply with this section.

Sec. 8-84. - Source reduction and recycling.

(a) This section is enacted for the purpose of compliance with the California Integrated Waste Management Act of 1989 in accordance with California Public Resources Code Sections 40000 et seq. ("Act"). The city has adopted a source reduction and recycling element and household hazardous waste element pursuant to said Act which provides for the imposition and collection of charges to fund the preparation, adoption and implementation of said elements. Such charges shall be determined, fixed and established by the city council by resolution. Such charges may be changed by the city council from time to time by resolution.

(b) A permittee, as a condition of the permit, shall comply with the following source reduction and recycling requirements:

(1) The permittee shall take all necessary steps to cause the industrial, commercial, multifamily residential units, and residential units who produce solid waste subject to the permit and the Act to divert solid waste as required by California Public Resources Code Section 41870 through source reduction, recycling and composting.

(2) The permittee shall provide and implement a source reducing and recycling plan for its customers to comply with the programs specified in the city source reduction and recycling element, and submit quarterly reports to the public services department summarizing its progress in diverting solid waste generated by its customers in the city as required by California Public Resources Code Section 41870 and 41821. The quarterly reports must identify the tonnage collected, tonnage recycled, tonnage composted, percentage of waste recycled and/or composted, materials recycled, and the progress and programs implemented during the reporting period.

(3) As a permittee of the city, the permittee shall be an authorized recycling agent of the city and shall become the owner of all solid waste and recyclable materials, and hazardous waste and infectious waste collected pursuant to the permit. The permittee is solely responsible for arranging for the collection, transportation, recycling, and disposal of all solid waste, hazardous waste or infectious waste collected pursuant to the permit. The recyclables become the property of the permittee once placed in the collection bin.

(4) The permittee shall collect a source reduction and recycling fee as imposed by resolution of the city council pursuant to the California Public Resources Code Section 41902 and this section.

(c) Failure of the permittee to comply with the provisions of this section shall subject the permittee to civil penalties as determined and approved by city council pursuant to California Public Resources Code Section 41954.

(d) Notwithstanding the provisions of section 8-83, a person or entity owning or occupying an industrial, commercial, multifamily residential, or residential unit shall be permitted to create and use compost, as defined in California Public Resources Code Section 40116, on the private or public property that such person or entity owns or occupies.

(e) The requirements of this section shall apply to the solid waste handling services provided by the solid waste enterprise under contract with the CMSD.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(H), 11-15-04)

Sec. 8-85. - Disposal of heavy objects.

Every person occupying or having charge or control of any premises in the city shall, at least once within each calendar month, collect and dispose of all waste material and debris, and all other material not included in the meaning of waste material as defined in section 8-76, which may have accumulated on his premises; provided that building or construction waste or debris will be removed upon completion of construction operations. All such waste and debris shall be removed to such dump grounds as may be provided or designated by the city or county.

(Ord. No. 92-31, § 3, 1-18-93)

Sec. 8-86. - Solid waste hauler permittees to comply with solid waste agreement with Orange County.

Notwithstanding the provisions of this article, any person or solid waste enterprise holding a permit issued pursuant to this article shall be required as a condition of that permit to comply with the provisions of the solid waste agreement between the County of Orange and the City of Costa Mesa, and as amended, which agreement is attached as Appendix A to Title 8 and incorporated herein by this reference. The provisions of this section shall be effective July 1, 1997.

(Ord. No. 97-8, § 1, 4-7-97)

Editor's note— The solid waste agreement referred to in § 8-86 above has not been included within this Code, but may be found attached to Ord. No. 97-8, adopted April 7, 1997, on file in the office of the city clerk.

Sec. 8-87. - Franchise fee.

(a) Franchise required. No solid waste enterprise shall collect or haul any solid waste along or across any public highway in the City of Costa Mesa without first obtaining and maintaining in effect a solid waste hauling franchise from the city for the use of such streets to conduct its business activity.

(b) Grant of franchise. The city hereby grants a solid waste hauling franchise to any solid waste enterprise upon the issuance to it of a permit issued pursuant to section 8-77 of this article. The term of the franchise shall run concurrently with the term of the permit and shall end upon the termination of the permit. The valid possession of such a permit shall be deemed to make a solid waste enterprise a franchisee under this section.

(c) Franchise types. Franchises for solid waste hauling, generally (class A), and franchises for affixed container vehicle operators hauling construction and demolition waste (class B) may be issued under this section.

(1) Holders of class A franchises ("class A franchisees") may operate any type of solid waste collection vehicle licensed and permitted by the State of California to collect, transport, remove, dispose and/or recycle any type of solid waste material generated by commercial, single-family residential, multi-family residential or industrial units within the city's waste disposal jurisdiction, except as provided in section 8-77(e)(7) of this article. Such franchisees have the exclusive right to place and collect bins and roll-off containers at commercial, single-family residential, multi-family residential and industrial locations, excepting recycling firms that collect materials free of charge or pay net positive revenue (inclusive of hauling fees) for the materials collected.

(2) Holders of class B franchises ("class B franchisees") may operate only affixed container vehicles permitted by the State of California to collect and transport non-putrescible and inert waste

generated at construction and deconstruction sites. Class B franchisees are not allowed to provide drop-off containers or bins at these sites or any other site within the city's waste disposal jurisdiction. Class B franchisees are allowed to utilize sub-contractors to perform waste hauling services provided that those sub-contractors only operate affixed container vehicles.

(d) Franchise fee. Every holder of a franchise issued pursuant to this section ("franchisee") shall pay a franchise fee as set by city council resolution based on the percentage of annual gross receipts. The purpose of the franchise fee is to provide funds to the city to pay for the maintenance and rehabilitation of the public highways in the city and for other general revenue purposes. Class A franchisees shall pay an annual minimum franchisee fee in the amount of ten thousand dollars ($10,000.00). This fee shall be prorated in the amount of two thousand five hundred dollars ($2,500.00) per quarter beginning with the quarter in which the franchise is granted. Class B franchisees shall pay an annual minimum franchisee fee in the amount of one thousand five hundred dollars ($1,500.00), which shall not be prorated. Such annual minimum franchisee fee payments shall be paid to the city upon issuance of a permit pursuant to section 8-77 of this article and, thereafter, by January 1 of each calendar year. Failure to timely pay franchise fees shall result in a penalty in the amount of five (5) per cent of the delinquent franchise fee owed, plus an additional one and one-half (1.5) per cent of the fee for each month, or any portion thereof, that payment is late. Failure to timely pay franchise fees may also result in the commencement of permit revocation proceedings. The annual minimum franchisee fee shall be credited only toward the franchise fees that accrue during the same calendar year in which the minimum fee is paid.

(e) Franchise fee reports. Every franchisee is required to submit a quarterly franchise fee report. Failure to submit a report within forty-five (45) days of the end of each calendar quarter shall result in a fine of one hundred fifty dollars ($150.00) for each non-submittal. Submission of an incomplete report shall constitute a failure to submit a report and shall be subject to the one hundred fifty dollars ($150.00) fine for non-submittal.

(f) Records requirements. Every franchisee shall maintain all records relating to its solid waste handling services pursuant to this section, including, but not limited to, customer lists, billing records, services requests, cash receipts records, records demonstrating compliance with the requirements of section 8-84(b) of this article, and other documents and materials that reasonably relate the franchisee's compliance with this section. Upon five (5) business days' notice, such records shall be made available for city inspection at the franchisee's regular place of business. If the franchisee's regular place of business is not located within the county, the franchisee shall make such records available for city inspection at a location within the county, as determined by the city.

(g) Audit requirements. An independent auditing firm shall perform an audit, at the city's expense, of any franchisee's records (the "city audit") to ensure compliance with the provisions of this section on an annual and/or as-needed basis, to be determined by the city. The scope of the city audit shall be set by city council resolution. If a city audit determines that a franchisee has not paid its full franchise fee, the city shall invoice the franchisee for the amount of the net deficiency plus a penalty fee equal to twenty (20) per cent of the net deficiency.

(h) Exemption. The franchise fee imposed pursuant to this section shall not be imposed upon any solid waste enterprise that has a franchise or contract with the Costa Mesa Sanitary District for any revenue the solid waste enterprise earns under that franchise or contract.

(Ord. No. 04-12, § 1(A), 11-15-04; Ord. No. 07-19, § 1, 12-4-07; Ord. No. 08-3, § 1, 1-15-08)

Secs. 8-88—8-96. - Reserved.

ARTICLE 2. - RESERVED[6]

Footnotes:

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Editor's note—

Sec. 8-97—8-130. - Reserved.

CHAPTER IV. - GARBAGE, RUBBISH AND WEEDS[4]

Footnotes:

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Cross reference— Transporting garbage in parks, § 12-29; rubbish in parks, § 12-51.

ARTICLE 1. - SOLID WASTE COLLECTION[5]

Footnotes:

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Editor's note—Section 2 of Ord. No. 92-31, adopted Jan. 18, 1993, amended Art. 1 of Ch. IV, specifically §§ 8-76—8-84, to read as herein set out. Formerly, §§ 8-76—8-84 pertained to garbage, rubbish, and weeds generally and derived from §§ 5200—5206 and § 5210 of the 1960 Code. Section 3 of Ord. No. 92-31 renumbered § 8-89 as § 8-85. Formerly § 8-89 derived from § 5211 of the 1960 Code and § 3 of Ord. No. 73-13, adopted April 16, 1973. Also, § 4 of Ord. No. 92-31 repealed §§ 8-86—8-89, which derived from §§ 5207—5209 of the 1960 Code.

Sec. 8-76. - Definitions.

The following terms as used in this article shall, unless the context already indicates otherwise, have the respective meanings herein set forth:

(a) Collection: The operation of gathering together and transporting solid waste to the point of disposal.

(b) County: County of Orange.

(c) Commercial units: Any commercial business establishment including, but not limited to, hotels, motels, offices and professional buildings, and retail establishments of all kinds, including supermarkets, filling stations, department and variety stores.

(d) Disposal: The complete operation of treating and disposing of the accumulations of refuse and of the product or residue arising from such treatment.

(e) Disposal station: A facility established, maintained and operated by the City or the County for the disposal of refuse.

(f) Garbage: Solid waste as defined in California Public Resources Code Sections 40191 and 49503.

(g) Multifamily residential units: A permanent building containing two (2) or more dwelling units including, but not limited to, mobile home parks.

(h) Hazardous waste:

(1) All waste defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act (42 USC 3251 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.), and all future amendments thereto, or regulations promulgated thereunder; and

(2) All waste defined in California Public Resources Code Section 40141 or characterized as hazardous waste by the Principal agencies of the State of California (including without limitation the Department of Health Services and the California Waste Management Board) having jurisdiction over hazardous waste generated by facilities within such state; provided that the term "hazardous waste":

a. Is intended to mean and include those substances which are not normally expected to be disposed of by generally accepted sanitary landfill disposal methods;

b. Shall include radioactive wastes; and

c. Shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste.

(i) Industrial units: Any business establishment engaged in manufacturing, warehousing, construction, and/or demolition.

(j) Infectious waste: Solid waste capable of producing an infection or pertaining to or characterized by the presence of pathogens or medical waste as regulated by the Medical Waste Management Act (California Health and Safety Code Section 25015 et seq.). It includes but is not limited to certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals, medical testing labs, and any waste which includes animal wastes or parts from slaughterhouses or rendering plants.

(k) Intermediate processing facility: A solid waste transfer or processing station or facility as defined in California Public Resources Code Section 40200.

(l) Material recovery facility: A solid waste facility where source-separated recyclables are processed and recovered.

(m) Permittee: Any person or solid waste enterprise who collects, hauls or disposes of any form of solid waste, hazardous waste or infectious waste for compensation pursuant to a permit issued under this section.

(n) Public highway: Any public street, alley, road, public place or highway open to and used by the traveling public and not used as a private right-of-way.

(o) Recycling: The process of collecting, sorting, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream as defined in California Public Resources Code Section 40180.

(p) Recyclable material: Solid waste material that through a process of collecting, sorting, cleansing, treating and reconstituting is returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

(q) Refuse. Solid waste as defined in California Public Resources Code Sections 40191 and 49503.

(r) Residential units: All those dwelling units not included in the definition of multifamily residential units unless otherwise designated by the city.

(s) Scavenge. The unauthorized removal of any recyclable materials as defined by California Public Resources Code Sections 41950 and 41951 or solid waste without a permit under this article.

(t) Solid waste. All solid waste as defined in California Public Resources Code Sections 40191 and 49503.

(u) Solid waste enterprise. A solid waste enterprise as defined in California Public Resources Code Section 49504.

(v) Solid waste handling services. A solid waste handling service as defined in California Public Resources Code Section 49505.

(w) Transfer station. A solid waste transfer or processing station or facility as defined in California Public Resources Code Section 40200.

(x) Organic Waste. Organic material including food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed with food waste.

(Ord. No. 92-31, § 2, 1-18-93)

Sec. 8-77. - Permit.

(a) No person shall collect any solid waste, hazardous waste or infectious waste upon, along or across any public highway in the city from any commercial, industrial or multifamily residential units, or residential units without first applying for and receiving all permits required from the city. In addition to the permit required under this article, a business license must be obtained prior to doing business within the city, and a separate vehicle permit for each and every vehicle used for collecting solid waste, hazardous waste or infectious waste and setting of containers within the city right-of-way. The permittee shall place each permit issued pursuant to this article in the lower right front window of the vehicle so that it is clearly visible from the street.

(b) The city shall develop and implement a procedure for evaluating the performance of any and all permittees operating under the provisions of this article. Permitted haulers shall submit quarterly reports to the director of public services from a state-or county-certified weighing facility documenting gross tonnage collected and net tonnage diverted except that tonnage for bins exclusively used for industrial construction or demolition may be certified and documented to the city by the permittee based on volume or other types of receipts from the receiving facility. The city reserves the right to randomly select trucks to have weighed by a state-certified facility to ensure compliance. All costs for random weight measurements will be borne by the permittee. Such a facility must have the ability to process recyclable materials in preparation for end-user markets. Failure to provide said reports within thirty (30) days will result in suspension of the permit until tonnage reporting is submitted to the director of public services. If said reports are not submitted within forty-five (45) days of the end of each quarter, the hauler's permit in effect at the time of the violation will be revoked as provided in section 8-79. Failure to meet minimum diversion rates will result in the revocation of the permit as provided in section 8-79.

(c) Any person or solid waste enterprise who is issued a permit pursuant to this article shall comply with all of the regulations in this article including but not limited to the source reduction and recycling provisions of section 8-84.

(d) Any person or solid waste enterprise desiring to obtain a permit to remove or convey any solid waste, hazardous waste or infectious waste upon or along any public highway within the city from any commercial, industrial or residential multifamily unit(s), or residential unit(s), shall sign and file an application with the city and pay a permit application fee established by resolution of the city council. To the extent permitted by law, the information submitted in the application shall be kept confidential.

(e) Each permit application shall be filed with the public services department and shall include the following information:

(1) The name and address of the applicant.

(2) The type of solid waste, hazardous waste or infectious waste to be collected in each of the applicable areas: Industrial commercial, multiple-family residential, and/or residential.

(3) The approximate amount of tonnage of solid waste to be collected in each of the applicable areas to be served by permittee: Industrial, commercial, multiple-family residential and/or residential.

(4) For hazardous waste and infectious waste, written proof that the person or solid waste enterprise has obtained all necessary permits from the county, State of California and federal agencies for the collection of such waste and has insurance coverage for the transport and disposal of such waste.

(5) A written source reduction and recycling plan with details and time frame for implementation on how the permittee will provide the programs to its customers as required by the City of Costa Mesa Source Reduction and Recycling Element which include but are not limited to all of the following:

a. Reduction of solid waste to maintain a fifty (50) per cent diversion rate through source reduction, recycling and composting.

b. Economic incentives to achieve the diversion rates set forth in subparagraph (5)a.

c. Technical, instructional, promotional, and educational programs to achieve the diversion rates set forth in subparagraph (5)a.

d. Composting programs to facilitate the achievement of the diversion rates set forth in subparagraph (5)a.

e. Special waste programs.

f. Organic waste recycling programs. In order to comply with the requirements of Chapter 12.9 of Part 3 of Division 30 of the Public Resources Code, the director of public services may require a permit applicant, seeking an A Tier hauler designation, to demonstrate their ability to provide organics recycling services as a condition of permit issuance.

(6) Any other information or additional financial information from the permittee, including, but not limited to, the right to audit financial records, or require a performance bond, or other suitable evidence of financial responsibility, if at any time such information is found to be necessary by the city council. The permittee will provide a certified copy of the permittee's last fiscal year's financial report, audited by a certified public accountant. All financial information contained in the permit application made to the city pursuant to this article shall be deemed to be confidential and shall be retained by the city for its use and, under no circumstances, will such information be released to anyone other than the permittee without the consent of the permittee.

(7) The Costa Mesa Sanitary District ("CMSD") will continue its franchise for all single-family residential and multi-family residential receiving curbside service. No other permittee will be allowed to operate in areas governed by the CMSD.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 93-7, §§ 1, 2, 2-16-93; Ord. No. 04-12, § 1(B), 11-15-04)

Sec. 8-78. - Issuance or denial of permit.

(a) When an application has been made to the city for a permit pursuant to this article, it shall be the duty of the director of the public services department to consider the matter, and he or she shall have the right to grant, condition or deny the permit request, and such decision shall be subject to an appeal to the city council pursuant to Chapter IX of Title 2 of this Code. In granting, conditioning or denying the permit request, the director of public services and the city council may take into consideration factors, including, but not limited to, the following:

(1) The ability of the permittee to comply with the solid waste handling service standards enumerated in this article.

(2) The ability of the permittee to comply with the equipment standards enumerated in this article.

(3) The ability of the permittee to comply with the provisions regarding insurance or bonds enumerated in this article.

(4) The ability of the permittee to provide programs and comply with the City of Costa Mesa Source Reduction and Recycling Element and implement the source reduction and recycling plan proposed by the permittee pursuant to paragraph (5) of subsection (e) of section 8-77.

(b) The decision by the city council on a permit application shall be final.

(c) No permit granted pursuant to this article shall be assigned or transferred without the consent of the director of public services. The term of the permit shall be for a period of seven (7) years, provided that on each anniversary date of a permit it shall be automatically extended for one (1) additional year so that the term remains seven (7) years unless at least sixty (60) days prior to the anniversary date either the city or permittee notifies the other in writing that the permit will not be renewed in which case the term shall not be extended for an additional year and will have only six (6) years remaining and shall not be automatically extended thereafter. Nothing in this subdivision shall prevent the city from terminating a permit before the end of its term pursuant to the provisions of section 8-79. No permit granted pursuant to this article shall limit the right of the city to grant an exclusive or nonexclusive franchise for solid waste handling services in the city. A permit issued under this article shall not grant the permittee rights under California Public Resources Code Section 49520, where at the time the permit is granted the permittee did not have a right to continue service under such section.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(C), 11-15-04)

Sec. 8-79. - Revocation of permit.

(a) In the event that any person or solid waste enterprise holding a permit to collect solid waste, hazardous waste, or infectious waste upon or along any public highway within the city from any commercial, industrial, or multifamily residential unit(s), or residential unit(s) violates any of the conditions of such permit, the requirements of section 8-87, the provisions of this article, or any other ordinance, statute, or regulation relating to the collection, storage, or disposal of solid waste, hazardous waste, or infectious waste, or collects such solid waste in an unlawful, improper, or unsanitary manner, the director of public services may revoke such permit issued to such person or enterprise as provided by this section.

(b) The director of public services may revoke a permit by issuing a written order to the permittee and the order shall state the grounds for such revocation, and that if proof of compliance is not provided to the director of public services within thirty (30) calendar days from the date of the written order, the permit will be revoked forty-five (45) calendar days from the date the written order was mailed. The order shall be mailed by certified mail to the permittee. The written order shall be subject to an appeal to the city council pursuant to Chapter IX of Title 2 of this Code. Upon revocation of a permit, the permittee shall cease all services subject to the permit within seventy-five (75) calendar days from the date the order is mailed. The director may adopt regulations to implement the provisions of this section.

(c) Regarding the failure of a permittee to comply with the requirements of section 8-84, including, but not limited to, the maintenance of the fifty (50) per cent diversion mandate, as required in its source reduction and recycling plan, the following procedure will be followed:

(1) The director will determine whether the permittee has made a good faith effort to comply with the conditions of the permit and the requirements of this article. The director will consider evidence submitted by the permittee concerning this matter and the permittee has the burden of establishing that it has made reasonable and feasible good faith efforts to achieve compliance. Evidence to be considered on this issue includes, but is not limited to, how close to compliance the particular deficiency is, the efforts the permittee has taken to meet the requirement, the expense required to provide the permittee with the means for compliance, the results of similar permittees in meeting the requirement, the availability of new technologies which the permittee could utilize to satisfy the requirement, the plans submitted by the permittee showing what steps it plans to take to enable it to fully comply with the requirement and the time that will take, whether permittee has already taken reasonable steps to alter its operations in time to meet the requirement, and what impact the permittee's failure has on the city's overall compliance with the state requirements for solid waste reduction and diversion. The permittee's good faith efforts must conform to any guidelines established by the city and/or the state in this regard.

(2) The provisions of this subsection authorizing the director to consider the good faith efforts of a permittee shall only be applicable so long as the state authorizes and grants a comparable good faith exception concerning the city's responsibilities under state law.

(3) If the director determines that a good faith effort has been made by the permittee, the director may decide not to revoke the permit. If the permit is not revoked, the director may impose new conditions to the permit, such as: (i) the permittee must prepare a full compliance plan to show how it intends to meet the diversion requirement, (ii) the plan must be submitted within 30 days and approved by the director, (iii) the permittee must comply with that plan, or (iv) any other conditions that the director concludes are appropriate and will help meet the requirements of state law and the city ordinance.

(4) If a permit is not revoked because the director determines that a good faith effort had been made, the permit revocation process may be commenced again at any time the director determines new grounds therefor exists, including, but not limited to, noncompliance with any new conditions placed upon the permit at the time the good faith determination was made.

(d) If a permit is revoked, no permit shall be thereafter granted to such person to collect solid waste, hazardous waste or infectious waste in the city until such time as the permittee can prove the ability to comply with this article.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 99-1, § 1, 2-16-99; Ord. No. 99-12, § 1, 7-19-99; Ord. No. 04-12, § 1(D), (E), 11-15-04)

Sec. 8-80. - Equipment requirements.

(a) Vehicles used by the permittee for solid waste handling services shall be approved by the director of public services or his or her designee and shall be in safe and operable condition. Vehicles shall be painted with the firm name on each side at a minimum of three-inch-high letters. No materials shall leak, fall or be spilled from any such vehicle or bin attached thereto. Vehicles shall be equipped with shovels and brooms to clean up spillage. Equipment bodies shall be of metal and watertight. Vehicles must pass city approved inspections and meet applicable air quality and vehicle emissions standards. Truck bodies shall be closed when used to transport solid waste, hazardous waste or infectious waste contents to places of disposal or separation for recycling. The maximum gross weight imposed by the wheels of any one (1) axle shall not exceed twenty thousand (20,000) pounds. Vehicles shall be operated in such a manner as to minimize their exterior noise levels in the city. Vehicles must conform to the California Vehicle Code and all other applicable laws and are subject to inspection at any time by the city or the California Highway Patrol.

(b) Each vehicle required to have a permit, pursuant to this article, must pass a California Highway Patrol Biannual Inspection of Terminals for each vehicle or other inspection approved by the director of public services. Proof of inspection is required to be submitted to the public services department twice per year. Failure to pass the vehicle inspection may result in denial or revocation of the permit.

(c) Each container of a residential unit utilizing curbside service shall comply with the requirements of the CMSD.

(d) Containers to be used by industrial and commercial units and multifamily units not utilizing curbside service shall be provided by the permittee. Containers shall have the name and the phone number of the permittee clearly visible on two (2) sides in letters not less than three (3) inches in height. Containers shall be of a design and size to contain all the contents therein in such manner as to promote good housekeeping conditions. The owner of such containers shall maintain them in a safe and sanitary condition. The director of public services shall have the authority to approve new containers at any time.

(e) All permittees shall maintain their containers to present a well-kept appearance and ensure that the container area is left clean of debris and refuse after pickup or delivery. Users shall be responsible for the cleanliness of the containers and sanitary conditions of the surrounding area between services.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(F), 11-15-04)

Sec. 8-81. - Service standards.

(a) In all areas of the city pickup shall be at least once per week. Pickups shall not be made between the hours of 8:00 p.m. and 7:00 a.m., unless otherwise approved by the director of public services or CMSD. No collection will be allowed on Sundays or between the hours of 8:00 p.m. and 7:00 a.m. on weekdays or weekends unless requested and specifically approved by the director of public services. In the event of a holiday, pickups shall be completed one (1) day later than the regularly scheduled collection day. The following are considered to be holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day.

(b) The schedule for collection from commercial and industrial units shall be determined by the permittee and occupants of such units and subject to review by the director of public services.

(c) The permittee shall provide all multi-family residential units a container or containers that have a minimum storage capacity of one-half (½) cubic yard of refuse per dwelling unit per week. The minimum service standards are subject to review by the director of public services.

(d) All collections of refuse from multi-family residential units of five (5) or more dwelling units shall be made from private property except where the director of public services has made a written determination that there is a physical limitation or documented safety issue(s) that prevents collection service from private property.

(e) The permittee shall be allowed, unless specifically forbidden to do so by the owners or occupants, to enter private courts or places or other private property to make collections under a contract or permit, except in drive-in eating places and drive-in markets where refuse is kept in a paved service yard and where the same shall be picked up from such service yard when deposited there.

(f) The permittee shall maintain a place of business at some fixed place within the county and shall maintain a telephone, listed in the telephone directory in his own name or in the firm name by which he is most commonly known. At all times during the hours between 8:00 a.m. and 5:00 p.m. of each day upon which collections are made, said office must be staffed to receive complaints regarding collection. An emergency number shall be made available to city hall for the hours between 5:00 p.m. and 8:00 a.m. and for days upon which collections are not made.

(g) If for some reason refuse is not collected, the permittee will leave a tag at least two (2) inches by six (6) inches explaining why on the receptacle or bundle. The condition referred to on said tag must be corrected within one (1) week. The permittee shall be required to maintain daily logs of all tags issued stating the location, and the reason for refusing collection.

(h) The permittee shall, in person or by his agent, visit the office of the director of public services at such times as the director of public services shall designate for the purpose of discussing any matters or subject relating to, and any complaints which may concern the performance of his or her permit. The permittee shall report back to the director of public services within the next working day regarding any action or procedure taken with reference to complaints or other matters discussed.

(i) In the event of a natural disaster, earthquake, storm, fire or other extraordinary occurrence that may tend to generate abnormal amounts of refuse, the city may require additional collection upon agreement between the city manager and the permittee.

(j) In the event that service is interrupted due to labor disputes or other events impacting the health, safety and welfare of the citizens of the city, the city shall have the right to take over and operate any and all equipment of the permittee in order to continue service pursuant to the terms of the contract or permit if it is determined by the city manager to be necessary to the health, safety and welfare of the citizens of the city. If necessary, in the judgment of the city manager, city employees may operate said equipment.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 00-17, §§ 1—3, 11-20-00)

Sec. 8-82. - Insurance and bonds.

(a) The permittee shall at all times keep fully insured, a his or her own expense, all persons employed by him, in connection with the contract as required by Workers' Compensation Insurance and Safety Act of the state, and shall hold the city free and harmless from all liabilities that may arise by reason on the injuries to any employee of the permittee who are injured while performing any work or labor necessary to carry out the provisions of a contract or permit. The permittee, during the life of the permit, shall keep on file with the city clerk evidence that the permittee is fully and properly insured as required by such act.

(b) If necessary, in the judgment of city council, the permittee shall deposit with the city a cash deposit or a performance bond guaranteeing the performance of any permit which he may have with the city. The cash deposit or bond shall be in the amount and in a form approved by the city attorney.

(c) The permittee shall indemnify the city, its officers and employees, against, and hold the city, its officers and employees, harmless from, any claims asserted against the permittee on account of the negligence of the permittee or its employees, by employees of the permittee or by third parties, arising out of personal injuries or property damage, including hazardous material clean-up costs and penalties, suffered by any such persons on account of the operations of the permittee hereunder. The permittee shall provide and maintain in effect, bodily injury, property damage and environmental liability insurance with limits in an amount approved by the city attorney and as set forth in the permit granted. The permittee shall have the city, its officials and employees named as an additional insured under each of the aforementioned policies, and such policies shall be endorsed to require thirty (30) days written notice to the city prior to any cancellation thereof. The permittee shall furnish to the city certificates evidencing that the insurance required hereunder is in effect and such certificates shall be in a form approved by the city's risk management office.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(G), 11-15-04)

Sec. 8-83. - Regulations.

(a) It shall be unlawful for any person to place, deposit, dump or cause to be placed, deposited or dumped any solid waste, hazardous waste or infectious waste in or upon any private property or in or upon any public property which the public is admitted by easement or license without the consent of the owner, or in or upon any public highway, street, alley, sidewalk, gutter, parkway or upon any private road, alley, sidewalk, gutter or driveway in common use, or upon any public property other than property designated or set aside as a disposal station for such purpose by resolution of the city council or county board of supervisors.

(b) It shall be unlawful for any person to place, deposit or dump solid waste, hazardous waste or infectious waste of any kind whatsoever upon any private or public property within a distance of one thousand (1,000) feet from any public highway in the city, or within a distance of five hundred (500) feet from any established residence or dwelling house within the city, or to cause or suffer or permit such solid waste, hazardous waste or infectious waste to be placed, deposited or dumped upon any public or private property within a distance of one thousand (1,000) feet of any public highway or within a distance of five hundred (500) feet of any established residence or dwelling house in the city, without first having obtained a use permit pursuant to the zoning laws of the city, county, and State of California, or pursuant to any other zoning law that may be hereafter adopted in the place and stead of said zoning laws of the city. The provisions of this subsection shall not apply to solid waste, hazardous waste or infectious waste placed into a container for pickup by a solid waste enterprise operating pursuant to a permit issued under this article.

(c) No person shall burn any solid waste, hazardous waste or infectious waste within the city without having first complied with all rules and regulations of the city, the county, the South Coast Air Quality Management District and the state.

(d) No person shall scavenge or bury any solid waste, hazardous waste or infectious waste within the city.

(e) Special arrangements must be made and permits issued by the county, State of California, and federal agencies for the disposal of any of the following items: Ammunition; explosives; industrial waste; chemicals; infectious; hazardous and radioactive waste; acids; drugs; medicines; human feces; unwrapped animal feces; and items which are too large for the collection equipment or which may damage the collection machinery such as large pieces of metal, machine parts, logs and tree stumps.

(f) Branches of trees, hedges, etc., shall be cut in lengths of not over four (4) feet and placed in containers or tied into bundles not exceeding fifty (50) pounds. All vacuum cleaner dust sweepings or ashes shall be wrapped and placed in the container. Newspapers and magazines may be bundled in bundles not exceeding fifty (50) pounds maximum. All metal containers may be placed in an enclosed container or wrapped in bundles not exceeding fifty (50) pounds maximum. In areas of curbside refuse collection, the requirements of this subsection are superseded by any requirements of the CMSD.

(g) It shall be unlawful for a person or solid waste enterprise to commingle solid waste collected from within the jurisdiction of the City of Costa Mesa with solid waste collected from any other jurisdiction. A violation of this subsection shall result in the revocation of the permit pursuant to section 8-79.

(h) For any type of solid waste collection in the city, it shall be unlawful for any person to use the services offered by a person, service, or enterprise that has not obtained all the required permits from the city pursuant to this article.

(i) All businesses as defined by Public Resources Code section 42649.1 generating four-cubic-yards of trash per week, and all multi-family properties of 5 units or more, must arrange for the collection and recycling of solid waste as follows:

(1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials with a permittee.

(2) Subscribe to a recycling service with a permittee that may include mixed waste processing that yields diversion results comparable to source separation.

(j) On or before April 1, 2016, all businesses as defined by Public Resources Code section 42649.8 eq seq., including multi—family residential dwellings of 5 or more units, must arrange for recycling services specifically for the organic waste that they generate in the manner specified in subsection k. as follows:

(1) On and after April 1, 2016, a business that generates eight cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste;

(2) On and after January 1, 2017, a business that generates four cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste;

(3) On and after January 1, 2019, a business that generates four cubic yards or more of commercial solid waste, as defined in Public Resources Code section 42649.1, per week, shall arrange for recycling services specifically for organic waste; and

(4) On or after January 1, 2020, if the state Department of Resources Recycling and Recovery determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste shall arrange for the organic waste recycling services specifically for organic waste, unless the Department of Resources Recycling and Recovery determines that this requirement will not result in significant additional reductions of organics disposal.

(k) All businesses as defined by Public Resources Code section 42649.8 et seq. including multi-family residential dwellings of 5 or more units located within the city shall do one or more of the following, except that a multifamily residential dwelling is not required to arrange for the organic waste recycling for food waste:

(1) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste with a permittee that recycles organic waste;

(2) Recycle its organic waste onsite or self-haul its own organic waste for recycling;

(3) Subscribe to a mixed waste processing service from a permittee that recycles organic waste; and/or

(4) Donate or sell organic waste to a person or entity authorized by law to receive such waste.

(l) Property management companies that contract for trash service for any commercial, institutional, or multi-family properties subject to this article are required to contract or otherwise make available recycling services to comply with this section.

~~(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 97-24, § 2, 8-4-97;~~ Ord. No. 10-11, § 1, 10-19-10)

Sec. 8-84. - Source reduction and recycling.

(a) This section is enacted for the purpose of compliance with the California Integrated Waste Management Act of 1989 in accordance with California Public Resources Code Sections 40000 et seq. ("Act"). The city has adopted a source reduction and recycling element and household hazardous waste element pursuant to said Act which provides for the imposition and collection of charges to fund the preparation, adoption and implementation of said elements. Such charges shall be determined, fixed and established by the city council by resolution. Such charges may be changed by the city council from time to time by resolution.

(b) A permittee, as a condition of the permit, shall comply with the following source reduction and recycling requirements:

(1) The permittee shall take all necessary steps to cause the industrial, commercial, multifamily residential units, and residential units who produce solid waste subject to the permit and the Act to divert solid waste as required by California Public Resources Code Section 41870 through source reduction, recycling and composting.

(2) The permittee shall provide and implement a source reducing and recycling plan for its customers to comply with the programs specified in the city source reduction and recycling element, and submit quarterly reports to the public services department summarizing its progress in diverting solid waste generated by its customers in the city as required by California Public Resources Code Section 41870 and 41821. The quarterly reports must identify the tonnage collected, tonnage recycled, tonnage composted, percentage of waste recycled and/or composted, materials recycled, and the progress and programs implemented during the reporting period.

(3) As a permittee of the city, the permittee shall be an authorized recycling agent of the city and shall become the owner of all solid waste and recyclable materials, and hazardous waste and infectious waste collected pursuant to the permit. The permittee is solely responsible for arranging for the collection, transportation, recycling, and disposal of all solid waste, hazardous waste or infectious waste collected pursuant to the permit. The recyclables become the property of the permittee once placed in the collection bin.

(4) The permittee shall collect a source reduction and recycling fee as imposed by resolution of the city council pursuant to the California Public Resources Code Section 41902 and this section.

(c) Failure of the permittee to comply with the provisions of this section shall subject the permittee to civil penalties as determined and approved by city council pursuant to California Public Resources Code Section 41954.

(d) Notwithstanding the provisions of section 8-83, a person or entity owning or occupying an industrial, commercial, multifamily residential, or residential unit shall be permitted to create and use compost, as defined in California Public Resources Code Section 40116, on the private or public property that such person or entity owns or occupies.

(e) The requirements of this section shall apply to the solid waste handling services provided by the solid waste enterprise under contract with the CMSD.

(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 04-12, § 1(H), 11-15-04)

Sec. 8-85. - Disposal of heavy objects.

Every person occupying or having charge or control of any premises in the city shall, at least once within each calendar month, collect and dispose of all waste material and debris, and all other material not included in the meaning of waste material as defined in section 8-76, which may have accumulated on his premises; provided that building or construction waste or debris will be removed upon completion of construction operations. All such waste and debris shall be removed to such dump grounds as may be provided or designated by the city or county.

(Ord. No. 92-31, § 3, 1-18-93)

Sec. 8-86. - Solid waste hauler permittees to comply with solid waste agreement with Orange County.

Notwithstanding the provisions of this article, any person or solid waste enterprise holding a permit issued pursuant to this article shall be required as a condition of that permit to comply with the provisions of the solid waste agreement between the County of Orange and the City of Costa Mesa, and as amended, which agreement is attached as Appendix A to Title 8 and incorporated herein by this reference. The provisions of this section shall be effective July 1, 1997.

(Ord. No. 97-8, § 1, 4-7-97)

Editor's note— The solid waste agreement referred to in § 8-86 above has not been included within this Code, but may be found attached to Ord. No. 97-8, adopted April 7, 1997, on file in the office of the city clerk.

Sec. 8-87. - Franchise fee.

(a) Franchise required. No solid waste enterprise shall collect or haul any solid waste along or across any public highway in the City of Costa Mesa without first obtaining and maintaining in effect a solid waste hauling franchise from the city for the use of such streets to conduct its business activity.

(b) Grant of franchise. The city hereby grants a solid waste hauling franchise to any solid waste enterprise upon the issuance to it of a permit issued pursuant to section 8-77 of this article. The term of the franchise shall run concurrently with the term of the permit and shall end upon the termination of the permit. The valid possession of such a permit shall be deemed to make a solid waste enterprise a franchisee under this section.

(c) Franchise types. Franchises for solid waste hauling, generally (class A), and franchises for affixed container vehicle operators hauling construction and demolition waste (class B) may be issued under this section.

(1) Holders of class A franchises ("class A franchisees") may operate any type of solid waste collection vehicle licensed and permitted by the State of California to collect, transport, remove, dispose and/or recycle any type of solid waste material generated by commercial, single-family residential, multi-family residential or industrial units within the city's waste disposal jurisdiction, except as provided in section 8-77(e)(7) of this article. Such franchisees have the exclusive right to place and collect bins and roll-off containers at commercial, single-family residential, multi-family residential and industrial locations, excepting recycling firms that collect materials free of charge or pay net positive revenue (inclusive of hauling fees) for the materials collected.

(2) Holders of class B franchises ("class B franchisees") may operate only affixed container vehicles permitted by the State of California to collect and transport non-putrescible and inert waste

generated at construction and deconstruction sites. Class B franchisees are not allowed to provide drop-off containers or bins at these sites or any other site within the city's waste disposal jurisdiction. Class B franchisees are allowed to utilize sub-contractors to perform waste hauling services provided that those sub-contractors only operate affixed container vehicles.

(d) Franchise fee. Every holder of a franchise issued pursuant to this section ("franchisee") shall pay a franchise fee as set by city council resolution based on the percentage of annual gross receipts. The purpose of the franchise fee is to provide funds to the city to pay for the maintenance and rehabilitation of the public highways in the city and for other general revenue purposes. Class A franchisees shall pay an annual minimum franchisee fee in the amount of ten thousand dollars ($10,000.00). This fee shall be prorated in the amount of two thousand five hundred dollars ($2,500.00) per quarter beginning with the quarter in which the franchise is granted. Class B franchisees shall pay an annual minimum franchisee fee in the amount of one thousand five hundred dollars ($1,500.00), which shall not be prorated. Such annual minimum franchisee fee payments shall be paid to the city upon issuance of a permit pursuant to section 8-77 of this article and, thereafter, by January 1 of each calendar year. Failure to timely pay franchise fees shall result in a penalty in the amount of five (5) per cent of the delinquent franchise fee owed, plus an additional one and one-half (1.5) per cent of the fee for each month, or any portion thereof, that payment is late. Failure to timely pay franchise fees may also result in the commencement of permit revocation proceedings. The annual minimum franchisee fee shall be credited only toward the franchise fees that accrue during the same calendar year in which the minimum fee is paid.

(e) Franchise fee reports. Every franchisee is required to submit a quarterly franchise fee report. Failure to submit a report within forty-five (45) days of the end of each calendar quarter shall result in a fine of one hundred fifty dollars ($150.00) for each non-submittal. Submission of an incomplete report shall constitute a failure to submit a report and shall be subject to the one hundred fifty dollars ($150.00) fine for non-submittal.

(f) Records requirements. Every franchisee shall maintain all records relating to its solid waste handling services pursuant to this section, including, but not limited to, customer lists, billing records, services requests, cash receipts records, records demonstrating compliance with the requirements of section 8-84(b) of this article, and other documents and materials that reasonably relate the franchisee's compliance with this section. Upon five (5) business days' notice, such records shall be made available for city inspection at the franchisee's regular place of business. If the franchisee's regular place of business is not located within the county, the franchisee shall make such records available for city inspection at a location within the county, as determined by the city.

(g) Audit requirements. An independent auditing firm shall perform an audit, at the city's expense, of any franchisee's records (the "city audit") to ensure compliance with the provisions of this section on an annual and/or as-needed basis, to be determined by the city. The scope of the city audit shall be set by city council resolution. If a city audit determines that a franchisee has not paid its full franchise fee, the city shall invoice the franchisee for the amount of the net deficiency plus a penalty fee equal to twenty (20) per cent of the net deficiency.

(h) Exemption. The franchise fee imposed pursuant to this section shall not be imposed upon any solid waste enterprise that has a franchise or contract with the Costa Mesa Sanitary District for any revenue the solid waste enterprise earns under that franchise or contract.

(Ord. No. 04-12, § 1(A), 11-15-04; Ord. No. 07-19, § 1, 12-4-07; Ord. No. 08-3, § 1, 1-15-08)

Secs. 8-88—8-96. - Reserved.

ARTICLE 2. - RESERVED[6]

Footnotes:

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Editor's note—

Sec. 8-97—8-130. - Reserved.