

**DRAFT**

**ORDINANCE NO. 2021-16**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS AMENDING CHAPTER 11.20 TO TITLE 11 OF THE ENCINITAS MUNICIPAL CODE – SOLID WASTE MANAGEMENT**

**WHEREAS**, the storage, accumulation, collection, and disposal of trash, rubbish, debris, and other discarded matter, goods, and materials is a matter of great public concern, in that improper control of such matters creates a public nuisance, can lead to air pollution, fire hazards, illegal dumping, insect breeding and rat infestation, and other conditions affecting the health, welfare, and safety of the residents of this and surrounding cities; and

**WHEREAS**, State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including organics) solid waste generated in their cities to the maximum extent feasible before any landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment; and

**WHEREAS**, State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires cities to implement a mandatory commercial recycling program; and

**WHEREAS**, State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert organic waste from businesses subject to the law, and requires cities to implement a mandatory commercial organics recycling program; and

**WHEREAS**, Green waste management law, Assembly Bill 1594 of 2014 (approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 to Part 2 of Division 30 of the Public Resources Code, relating to waste diversion, as amended, supplemented, superseded, and replaced from time to time), mandates that as of January 1, 2020, the use of green material as alternative daily cover (ADC) does not constitute diversion through recycling and will be considered disposal for purposes of measuring a jurisdiction's 50 percent per capita disposal rate; and

**WHEREAS**, Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, commercial businesses and business owners, commercial edible food generators,

haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

**WHEREAS**, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires cities to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 regulations. This ordinance will also help reduce food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption; and

**WHEREAS**, requirements in this ordinance are consistent with other adopted goals and policies of the City including Strategy 6 of the City's Climate Action Plan: Zero Waste, which has a goal of diverting 80 percent of total solid waste generated (equivalent to 3 pounds per capita per day waste disposal) by 2030; and

**WHEREAS**, the periodic collection of solid waste, recycling, and organics from all residences and places of business in the City benefits all occupants of residences and businesses within the City and, therefore, the collection of garbage, recyclables, and organics in the City shall be a mandatory service. All occupants, and legal owners, as hereinafter defined are made liable for the payment of fees for the mandatory service as may be from time to time approved by the City Council/

**NOW, THEREFORE**, the City Council of the City of Encinitas, California, does ordain as follows:

**SECTION 1.** All of the above statements are true; and

**SECTION 2.** Chapter 11.20 of Title 11 of the Encinitas Municipal Code is hereby amended to read as follows (the strikethrough text represents deleted language and the underlined text represents new language):

## **Chapter 11.20**

### **Solid Waste Management**

#### **SECTIONS:**

- 11.20.010 Purpose and Intent.**
- 11.20.020 Definitions.**
- 11.20.030 Award of Franchise.**
- 11.20.040 Exemptions.**
- 11.20.050 Collection in Emergencies.**
- 11.20.060 Issuance of Franchise.**
- 11.20.070 Terms of Franchise.**
- 11.20.080 Revocation of Franchise.**
- 11.20.090 Obligations of Customers.**
- 11.20.100 Special Provisions Regarding Method of Disposal by Customers.**
- 11.20.110 Franchisee's Employees.**
- 11.20.120 Franchisee's Vehicles.**
- 11.20.130 Operations of Franchisee.**
- 11.20.140 Transfer of Solid Waste by Franchisee.**
- 11.20.150 Charges for Service.**

<b>11.20.160</b>	<b>Mandatory Collection and Payment of Charges.</b>
<b>11.20.164</b>	<b>Failure to Pay Franchisee for Refuse Collection.</b>
<b>11.20.168</b>	<b>Special Assessment Collection.</b>
<b>11.20.170</b>	<b>Implementation and Enforcement of Mandatory Recycling.</b>
<b>11.20.180</b>	<b>Payment Under Protest.</b>
<b>11.20.190</b>	<b>Title to Solid Waste and Recyclables.</b>

#### **11.20.010 Purpose and Intent.**

A. The storage, accumulation, Collection and disposal of Solid Waste (including garbage, trash, rubbish, debris, Recyclable Materials, and other discarded matter, goods, and materials) is a matter of great public concern, in that improper control of such matters creates a public nuisance, can lead to air pollution, fire hazards, illegal dumping, insect breeding and rat infestation, and other conditions affecting the health, welfare, and safety of the residents of this and surrounding cities. The periodic collection of Solid Waste from all residences and places of business in the City benefits all occupants of residences and businesses within the City. Therefore, the collection of Source Separated Gray Container Waste, Source Separated Recyclable Materials, and Source Separated Green Container Organic Waste (as defined in Section 11.20.020 of this Chapter) in the City shall be a mandatory service. All occupants, and legal owners, as hereinafter defined are made liable for the payment of fees for the mandatory service as may be from time to time approved by the City Council. The regulations provided in this chapter are designated to eliminate such problems.

B. The City Council shall have the authority to make other reasonable rules and regulations concerning individual collection, transfer, processing, disposal, and hauling of solid waste over City streets by private persons, or relating to the operation of a transfer station or processing facility. (Ord. 88-24; Ord. 96-17)

#### **11.20.020 Definitions.**

Whenever the following defined words and phrases are used in this chapter, they shall have the definition or meaning established by this section, unless it is clearly apparent from the context in which the word or phrase appears, that a different definition or meaning is intended.

“Adequate Level of Collection Service(s)” means a level of service(s) that the City has deemed to meet the following goals: (a) Maintain public health and safety; (b) Prevent excessive material accumulation, container overflow, spillage, and storage of materials outside of approved containers; and 3) Ensure sufficient container capacity for properly Source Separated Gray Container Waste, Source Separated Recyclable Materials, and Source Separated Green Container Organic Waste.

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials.

“Cardboard” means post-consumer waste paper grade corrugated cardboard (#11), kraft (brown) paper bags or solid fiber boxes which have served their packaging purpose and are discarded and can later be reclaimed for collection and recovery for recycling.

“City” means the City of Encinitas.

“City Agent” means any employee or agent of the City designated by the City Manager or City Council as being responsible for administering, directing, supervising, collecting and providing for the collection, transfer, processing, and/or disposal of Solid Waste.

“City Manager” means the City Manager of the City of Encinitas.

“Collection” or “Collection Services” means the organized picking up of Solid Waste by an authorized City Franchisee.

“Commercial” or “Commercial Business” means a firm, partnership, proprietorship, joint-stock, company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling. A Residential dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

“Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4), or as otherwise defined by 14 CCR Section 18982(a)(8).

“Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility. Compost has the same meaning as in 14 CCR Section 17896.2(a)(4) if otherwise defined in that section.

“Construction and Demolition Waste” or “C&D Debris” means any rubble or other materials resulting from dredging, grubbing, construction, remodeling, repair or demolition activities on housing, commercial or governmental buildings and any other structure and pavement or as otherwise defined in Encinitas Municipal Code 11.22.020.

“Council” means the City Council of the City of Encinitas.

“Curbside Collection” means the collection of Recyclables from the residential waste stream from curb or alleyway.

“Franchisee” means any Solid Waste collector or recycling agent authorized by the City Council of the City of Encinitas, pursuant to the procedures established by this chapter.

“Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28). Gray Containers shall be used for the storage and collection of Gray Container Waste.

“Gray Container Waste” means Solid Waste that is collected in a Gray Container as part of a three-container organic waste collection service. Gray Container Waste has the same meaning as in 14 CCR Section 17402(a)(6.5) if otherwise defined in that section. Pursuant to 14 CCR Section 18984.1(a) and (b), Gray Container Waste does not include Organic Waste.

“Green Container” has the same meaning as in 14 CCR Section 18982.2(a)(29). Green Containers shall be used for the storage and collection of Source Separated Green Container Organic Waste.

“Household Hazardous Waste” means any unused or leftover portion of products containing toxic chemicals. Any product used for maintaining a private residence which is labeled Caution, Warning, Danger, Poison, Toxic, Flammable, or Corrosive.

“Metal” means recoverable aluminum, tin, and bi-metal materials such as used beverage containers, siding, and other recyclable manufactured metal items.

“Non-Compostable Paper” includes but is not limited to paper that is coated in a plastic material that will not breakdown in the composting process. Non-Compostable Paper has the same meaning as in 14 CCR Section 18982(a)(41) if otherwise defined in that section.

“Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics and glass. Non-Organic Recyclables has the same meaning as in 14 CCR Section 18982(a)(43) if otherwise defined in that section.

“Occupants” means and includes every owner of, and every tenant or person who is in possession of, that is the inhabitant of, or has the care and control of, an inhabited residence or place of business..

“Organic Waste” means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges. Biosolids and digestate have the same meaning as in 14 CCR Section 18982(a). Organic Waste has the same meaning as in 14 CCR Section 18982(a)(46) if otherwise defined in that section.

“Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling. Paper Products has the same meaning as in 14 CCR Section 18982(a)(51) if otherwise defined in that section.

“Person” as used in this chapter means any individual, firm, corporation, association, or group or combination acting as a unit.

“Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white woven envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications. Printing and Writing Papers has the same meaning as in 14 CCR Section 18982(a)(54) if otherwise defined in that section.

“Recyclable Materials” and “Recyclables” means paper, glass, Cardboard, newspaper, plastic, used motor oil, ferrous metal, aluminum, Organic Waste, tin and bi-metal cans, white

goods (kitchen or other large appliances), or other materials which may be recycled for use in an altered form that has been Source Separated from other Solid Waste.

“Recycling” has the same meaning as established by Public Resources Code section 40180.

“Residential Dwelling Unit” or “Residential” means each place used for residential dwelling purposes for a single-family. A structure may have one or more residential dwelling units, provided that structures containing more than four (4) individual dwelling units are considered Commercial for purposes of this Chapter. No place used primarily for business purposes shall be considered as a residential dwelling unit.

“Solid Waste” means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes. Solid Waste includes Recyclable Materials. Solid Waste does not include any of the following wastes:

1. Hazardous waste, as defined in the State Public Resources Code Section 40141.
2. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).
3. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

Solid Waste has the same meaning as in State Public Resources Code Section 40191 if otherwise defined in that section.

“Source Separated” means and refers to materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them 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. Source Separated has the same meaning as in 14 CCR Section 17402.5(b)(4) if otherwise defined in that section.

“Source Separated Blue Container Organic Waste” means Source Separated Organic Wastes, as specified by City or Designee, that can be placed in a Blue Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables.

“Source Separated Green Container Organic Waste” means Source Separated Organic Waste, as specified by City or Designee, that can be placed in a Green Container that is limited to the collection of Organic Waste by the generator. Source Separated Green Container Organic Waste does not include Source Separated Recyclable Materials, carpets, Non-Compostable Paper, hazardous wood waste, and textiles.

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

“Streets” means the public streets, ways, alleys, and places, except state freeways, as the same now or may hereafter exist within the City.

“Transfer Station” means the City’s designated site where collected Solid Waste may be transferred to vehicles which will haul the Solid Waste to a processing or disposal site.

“Truck” means any truck, trailer, semi-trailer, conveyance, or vehicle used or intended to be used for the purpose of collecting Solid Waste or to haul or transport Solid Waste.

“Yard Wastes” means leaves, grass, weeds and wood materials from trees and shrubs. (Ord. 88-24; Ord. 96-17)

#### **11.20.030 Award of Franchise.**

A. The disposal and collection of Solid Waste are services subject to the provisions of this chapter.

B. No person shall collect, remove, or dispose of any Solid Waste within the City, nor transport Solid Waste over any public street or rights-of-way, unless a franchise to do so has first been obtained from the City and such person complies with the provisions of this chapter.

C. It is unlawful for any person to permit, allow or enter into any agreement whatsoever, for the collection or transportation of Solid Waste with any person who is not a franchisee as defined in this chapter, except as permitted in this chapter.

D. It is unlawful for any person to burn, bury, or dump Solid Waste within the City at any time, unless a special permit for such burning, burial or dumping has been issued by the City.

E. It is unlawful for any person to store or accumulate any Solid Waste, in any container or at any location for a period of time in excess of one (1) week. Furthermore, it is unlawful for any person to store or accumulate Source Separated Green Container Organic Waste at locations within commercial and industrial zones for a period of time in excess of forty-eight (48) hours (Sundays and holidays excepted). Such periods of time which end in any week in which a holiday occurs are extended one additional day.

F. Other than as herein set forth, it is unlawful for any person to dump, bury, or otherwise dispose of, or store or accumulate, any Solid Waste on any private or public property within the City, provided, however, that leaves, grass clippings, and other Organic Wastes may

be permitted for the purpose of Community Composting under such circumstances and conditions as established by the City Manager.

G. Nothing in this chapter shall be construed to prohibit the use of garbage disposal devices authorized by the Uniform Plumbing Code, or to prohibit occupants of property from periodically transporting and disposing of Solid Waste generated from the occupant's property to an authorized landfill or recycling drop-off site.

H. Each day's violation shall be treated and considered as a separate and distinct offense. (Ord. 88-24; Ord. 96-17)

#### **11.20.040 Exemptions.**

A. Collection, removal, and disposal of Household Hazardous Waste are not subject to the franchise provisions of this chapter.

B. The following types of collection or transportation of Solid Waste is exempted from the requirements of this chapter:

1. Yard Waste removed from a premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a transportation service and tree trimmings, clippings, and all similar materials generated at parks, and other City-maintained premises, which may be collected and transported by the City to the processing or disposal site.

2. Construction and Demolition Waste removed from a premises by a licensed demolition contractor as an incidental part of a total service offered by that contractor rather than as a transportation service.

3. By products of sewage treatment, including sludge, grit, and screenings.

4. The collection of Household Hazardous Waste or otherwise dangerous materials as part of regular services, to include without limitation, liquid and dry caustics, acids, biohazardous, flammable, explosive materials, insecticides, and similar substances.

5. The collection of infectious medical waste (as defined in California Health and Safety Code Section 25117.5). (Ord. 88-24; Ord. 96-17)

#### **11.20.050 Collection in Emergencies.**

In emergencies where, in the judgment of the City Manager, the particular situation justifies such action, the City Manager may issue limited or temporary franchises to private persons or corporations to perform any of the services covered by this chapter, subject to such reasonable fees, charges, and conditions as the circumstances may warrant and as the parties involved may agree upon; provided, that such fees and charges received from, or paid to, any private persons or corporations under this section for any period exceeding 15 days' duration shall be approved by the City Council. (Ord. 88-24)



#### **11.20.060 Issuance of Franchise.**

A. City shall provide for the Collection of Solid Waste within the City by the granting of one or more franchises. The City may grant an exclusive franchise for Solid Waste Collection Services.

B. From time to time, the City Council may issue a request for proposal to provide Solid Waste Collection Services within the city.

C. When proposals are requested by the City Council, the City Manager shall investigate the information contained in each proposal and prepare a report to the City Council.

D. After the completion of the investigation, the City Manager shall schedule the matter for a public hearing before the City Council. Notice of the hearing shall be given to each proposer and shall be published in a newspaper of general circulation at least 15 days prior to the date of the hearing.

E. The City Council shall not be required to issue a franchise based upon the offer of a lower or the lowest rate, but shall be free to issue a franchise to the person(s) deemed best suited to comply with the terms of this chapter and such other terms and conditions imposed by the City Council.

F. When considering whether to issue a franchise, the City Council may take into consideration the service performance of the existing operator or operators, and may give preference to existing operators.

G. From time to time, the City Council may amend the franchise agreement to conform with current conditions, technologies and regulations. (Ord. 88-24; Ord. 96-17; Ord. 2006-02)

#### **11.20.070 Terms of Franchise.**

The terms and conditions of an issued franchise shall contain, without limitations, the following terms which are no less stringent than the following:

A. The City Council may require the Franchisee to pay an annual franchise fee in an amount established by the City Council. The annual fee shall reflect the City's cost of administering this chapter, and may include recovery of the City's costs of performing litter abatement programs, implementation of AB 939 and SB 1383 objectives, and other Solid Waste management programs.

B. No assignment or transfer of a franchise or any right occurring under such franchise, shall be made in whole or in part by the Franchisee without first obtaining the express, written consent of the City Council.

C. The City Council may require the Franchisee to post with the City Clerk, security in a form and amount satisfactory to the City Council to secure the full and faithful performance by the collector of obligations under the applicable provisions of this chapter. The security shall

be kept in full force and effect by the collector throughout the life of the franchise and all renewals thereof.

D. Franchisee shall agree to appear and defend all actions against the City arising out of the exercise of the franchise, and shall indemnify and save the City, its officers, employees, and agents harmless of and from all claims, demands, actions or causes of action, of every kind and description resulting directly or indirectly, arising out of, or in any way connected with the exercise of the franchise, including, but not by way of limitation, any act or omission of any officer, employee, or agent of Franchisee; but excluding any claim alleged to have arisen solely out of the conduct of the City.

E. The City Council may require the Franchisee to obtain and keep in force during the term of the franchise, public liability and bodily injury insurance in an amount set by the City Council; and worker's compensation insurance covering all employees of the Franchisee. Copies of such policies, or certificates evidencing such policies, shall be filed with the City Manager. The City may be named an additional insured on all policies. The policy may contain a provision requiring a 90-day notice to be given to the City prior to cancellation, modification, or reduction of limits. The amounts of public liability insurance for bodily injury and property damage shall be subject to review and adjustment by the City Council.

F. Infectious medical waste (as defined in California Health and Safety Code Section 25117.5) shall not be collected by the Franchisee.

G. Franchisee shall not be required to collect hazardous or dangerous materials as part of regular collection activity.

H. Franchisee shall comply with all applicable local and state laws and regulations, and shall obtain and keep in force all required permits and licenses.

I. Franchisee shall provide full time residential and Commercial Collection and recycling services over established routes, and may also provide other Solid Waste Collection Services such as the provision of temporary dump boxes, roll off bins, and temporary containers.

J. Franchisee providing Residential, Commercial, or industrial Organic Waste Collection Services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:

1. Through written notice to the City annually on or before January 31, identify the facilities to which they will transport Organic Waste, including facilities for Source Separated Recyclable Materials and Source Separated Green Container Organic Waste.

2. Transport Source Separated Recyclable Materials and Source Separated Green Container Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.

3. Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1 and the City's C&D ordinance (Chapter 11.22).

K. Franchisee's authorization to collect Organic Waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, and as specified in Encinitas Municipal Code Chapter 11.23, entered into with City.

L. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, composting facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon City request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.

M. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days.

N. The City Council may impose such other terms and conditions on the franchise as the City Council may deem necessary or proper to accomplish the purposes of this chapter and shall reserve the right in each franchise to, from time to time, amend the franchise and this chapter; which amendments shall be binding upon any franchisee. (Ord. 88-24; Ord. 2017-07)

#### **11.20.080 Revocation of Franchise.**

A. A franchise may be revoked:

1. At the option of the City Council, in the event there is a change of ownership of any kind or nature of the operating company, unless approval therefor has been previously obtained in writing from the City Council; or

2. If it is determined by the City Manager that the Franchisee has not complied with the provisions of this chapter and all other applicable statutes, ordinances, rules and regulations, and contractual obligations, the City Manager shall notify the franchisee in writing of noncompliance and shall order compliance.

B. In the event that any Franchisee shall fail or refuse to conform to the conditions of the franchise or this chapter, the City Council, at its option and after a hearing called upon 10 days' written notice to the Franchisee, may revoke such franchise. (Ord. 88-24)

#### **11.20.090 Obligations of Customers.**

A. Customers shall place all Solid Waste within Franchisee-provided automated Solid Waste Container(s). Automated Solid Waste Containers shall remain the property of the Franchisee.

B. It shall be the duty of institutions producing infectious medical waste (as defined in California Health and Safety Code Section 25117.5) and similar substances to insure that such material is not deposited in Collection containers, but is handled, stored and disposed of only in the manner approved by the County Health Officer or designated deputy, and in accordance with the California Health and Safety Code.

C. It shall be the duty of the occupants of residential, Commercial, and industrial occupancies to insure that liquid and dry caustics, acids, biohazardous, flammable, explosive materials, insecticides, and similar substances are not deposited in collection containers, but are handled under separate agreement between the Franchisee and customer, and in accordance with the provisions of the California Health and Safety Code.

D. Except as otherwise expressly provided herein, all containers or receptacles used for the reception, removal, and disposal of Solid Waste should be water tight, constructed of a material of suitable strength and durability, shall be tight seamed and provided with handles and a tight fitting lid or cover, which lid shall be and remain affixed to the container at such time as the Solid Waste is placed within the container.

E. No person shall fill any Solid Waste Container above the top of the container to such extent as to permit the contents of any container to be blown or otherwise strewn about.

F. Clean Cardboard containers shall not be used as containers for the Collection and/or disposal of Solid Waste.

G. In Commercial and business zones, Gray and Blue Containers shall be metal-lined, leakproof, constructed of noncombustible materials, provided with an impervious lid, and approved by the fire department or its representative as providing adequate protection against fire hazard. However, recyclable glass may be placed in plastic containers. Additionally, Green Containers shall be leakproof, constructed of noncombustible materials, provided with an impervious lid, and approved by the Fire Department or its representative as providing adequate protection against fire hazard.

H. It shall be the duty of occupants of Residential property to set out or place containers or receptacles for Collection and removal of Solid Waste as follows:

Automated Solid Waste containers shall be placed at the curb in front of the premises occupied by the person for Collection by the Franchisee on the day specified by the Franchisee for Collection of the Solid Waste, provided that the Franchisee may designate some other location for the placement of containers and receptacles to expedite Collection. When no curb exists, place the containers as close to the roadway edge as possible without creating safety hazards for vehicle traffic or pedestrians. Containers shall not be placed in front of mail receptacles or on sidewalks unless directed to do so by the Franchisee.

I. Property owners shall provide all tenants with convenient access to recycling services for Organic Waste and Source Separated Recyclable Materials. This applies to both Residential and Commercial tenants.

K. The City Manager may temporarily allow a Franchisee to place a Commercial Solid Waste Collection container in that portion of a roadway reserved for the parking of vehicles, provided, that the Franchisee shall first agree to defend and indemnify the City for any damage, liability or claim in any manner caused by the existence of the container at the allowed location and provided, further, that the Franchisee shall agree to comply with any conditions deemed necessary by the City Manager to protect the public health, safety, or welfare.

L. No person shall place, or cause to be placed, at a location designated for Collection that is within public view, any Solid Waste or Solid Waste Container at any time other than the days established by the City for the Collection of such Solid Waste on the particular route involved; not earlier than sunset of the day preceding the day designated for Collection.

M. All Solid Waste containers shall be removed from the location designated for Collection prior to midnight of the day the containers and receptacles have been emptied.

N. Each owner, occupant, or lessee of a house or building used for residential, business or commercial purposes, shall maintain supervision and surveillance over the Solid Waste Containers on the premises, and shall maintain the same in a sanitary condition. If the containers should not be emptied and the contents removed on the date and time scheduled by the Franchisee, customer shall immediately notify the Franchisee and it shall be the duty of the Franchisee to forthwith arrange for the Collection and disposal of the Solid Waste, Organic Waste, and/or Collection of Source Separated Recyclable Materials. However, should the owner or occupant fail to place the materials at the designated location in time for regular Collection, the Franchisee is not obligated to make a special, separate Collection for the convenience of the occupant and may require payment of an additional fee for such late Collection.

O. Junk, salvage, and other Solid Waste which exceeds the limitations hereinabove set out may, in the discretion of the Franchisee, be scheduled for special Collection upon the application of the occupant of the premises. Special Collection charges may be assessed by the Franchisee for this service.

P. No person, other than the owner thereof, owner's agents or employees, or an officer or employee of this City, or any person holding a franchise with this City for the Collection or disposal of Solid Waste, Franchisee's agents or employees authorized for such purposes, shall tamper or meddle with any Solid Waste container or the contents thereof, or remove the contents of any Solid Waste container or remove any Solid Waste container, from the location where the same shall have been placed by the owner thereof or owner's agent.

Q. Unless otherwise expressly authorized in this chapter, all Solid Waste created, produced, or accumulated in or about a dwelling house or place of human habitation in the City shall be mandatorily removed from the premises at least once each week:

1. All garbage created, produced or accumulated at Commercial Businesses where Solid Waste containing garbage and Organic Waste is accumulated shall be mandatorily

removed from the premises at least once a week. The San Diego County Health Department may require a greater number of Collections per week.

2. It is unlawful for the occupant of any premises described in this section, to fail or neglect to provide for the removal of Solid Waste.

R. No persons shall cast, place, sweep, or deposit anywhere within the City boundaries, any Solid Waste, or other refuse in such manner that it may be carried or deposited by wind or rain on any streets, sidewalk, alley, sewer, storm drain, parkway, or other public place, or into any occupied premises within the City. (Ord. 88-24; Ord. 96-17; Ord. 2006-02)

#### **11.20.095 Shared Collection Services**

A. For Commercial Businesses and multi-family Residential dwellings, separate properties may share Collection Services provided that all the following are met:

1. A property owner, property manager, or a property owners' association agrees to subscribe to the Collection Service(s) on behalf of all of the properties sharing the service and to pay the corresponding service charges;

2. The party subscribing to the Collection Service(s) agrees to take responsibility for all aspects of the service, including corrective actions if a shared collection container is determined to be a "contaminated container," as defined in Chapter 11.23.020;

3. The Franchisee is informed of and approves which properties are sharing which Collection Service(s);

4. The properties sharing the Collection Service(s) are contiguous, and Solid Waste materials do not have to be moved on or across a public street from the point of generation to a collection container; and

5. Collection containers are reasonably convenient and accessible to all Occupants and tenants sharing the Collection Service(s).

B. For Organic Waste and Recyclable Materials services, two or more adjacent properties may share Organic and Recyclable Materials collection containers while individually subscribing to and paying for Solid Waste Collection Service provided that:

1. The other provisions of this section are met;

2. The shared services meet the Adequate Level of Collection Service standards; and

3. The shared services shall be reasonably convenient to all Occupants or tenants sharing the collection containers.

#### **11.20.100 Special Provisions Regarding Method of Disposal by Customers.**

A. The removal of wearing apparel, bedding, Solid Waste, or waste materials from homes, hospitals, or other places where highly infectious or contagious diseases have prevailed, shall be performed under the supervision and direction of the County health officer and such materials shall neither be placed in containers nor receptacles nor left for regular Collection and disposal.

B. Highly inflammable or explosive or radioactive waste shall not be placed in containers or receptacles for regular Collection and disposal, but shall be removed under the supervision of the City Fire Department at the expense of the owner or possessor of the material.

C. Solid Waste containing water or other liquids shall be drained before being placed in a container or receptacle.

D. No battery acid, poisonous, caustic or toxic material, or other substance capable of damaging clothing or causing injury to persons, shall be mixed or placed with any Solid Waste which is to be collected, removed or disposed of by the City or City Agent. Such items shall be removed at the occupant's expense only after arrangements have been made with the City or City Agent for such removal.

E. Containers for Solid Waste shall be provided by Franchisee to each of their customers.

F. All Recyclable Materials shall be separated from other Solid Waste, and placed for Collection in the same manner as when their regular garbage Collection occurs. (Ord. 2006-02)

#### **11.20.110 Franchisee's Employees.**

A. Franchisee must guarantee a top quality of service by industry standards; competent, qualified, sober, identifiable and uniformed personnel who serve the public in a courteous, helpful, and impartial manner.

B. The City may, at its option, require fingerprinting of the Franchisee's employees whose service will cause them to enter onto or work in close proximity to private property.

C. Any employee driving Franchisee's vehicles shall at all times have in their possession a valid and appropriate vehicle operator's license issued by the State of California.

D. The Franchisee and its employees shall be required to wear clean identifiable uniforms when engaged in Solid Waste Collection Service on public streets.

#### **11.20.120 Franchisee's Vehicles.**

A. Franchisee's trucks, trailers, or other vehicles must comply with the regulations as set forth in the California Motor Vehicle Code, all other applicable California codes and this chapter.

B. Any persons who desire to operate privately owned, Solid Waste Collection vehicles under provisions of this chapter shall provide that their vehicles are water tight and are provided with a tight cover. The City Manager shall require the Franchisee to remove from service or repair those vehicles that allow or permit offensive odors to escape and/or materials to be blown, dropped, or spilled therefrom.

C. No person shall leave trailers or trucks loaded with Solid Waste parked for over a 24-hour period on the City streets.

D. Each vehicle of the Franchisee shall at all times have in the cab the registration of the truck, certificate of insurance card, and an identification card with the name of whom to telephone in case of an accident. Each vehicle shall also be equipped with a five-pound fire extinguisher certified by the California State Fire Marshal.

E. All of the Franchisee's equipment shall be available for inspection, at the discretion of the City Manager, at the point of operation.

F. All vehicles used for Solid Waste Collection within the City shall:

1. Be completely enclosed with a rigid, nonabsorbent cover while transporting Solid Waste in or through the City. Completely enclosed with a rigid, nonabsorbent cover means that Solid Waste shall not be visible from the street nor shall any of the substance be permitted to leak, spill or become deposited along the public streets.

2. Be painted the same colors as approved by the City Manager and identified by truck numerals and company logo.

3. Be kept clean and maintained at all times.

G. The specifications of vehicles used for Recycling Collection may be separately established by the City Council and specified in the franchise agreement.

#### **11.20.130 Operations of Franchisee.**

A. Franchisee shall not collect Solid Waste within a Residential area between the hours of 6:00 p.m. and 6:00 a.m. the next day. With prior written permission of the City Manager, these times may be changed.

B. Franchisee shall exercise all reasonable care and diligence in collecting Solid Waste so as to prevent spilling, scattering, or dropping of materials, and shall immediately, at the time of occurrence, clean up any spillage.

C. Franchisee shall dispose of all collected materials, at Franchisee's expense, at an authorized landfill or transfer station in a manner satisfactory to the City, and in accordance with all state and local taxes and regulations.

D. Franchisees shall provide an office with a full time manager with toll free telephone service from the entire City. Telephones will be attended by competent personnel from 8:00 a.m.



to 5:00 p.m. on regular workdays, 8:00 a.m. to 12:00 noon on Saturdays, and an answering service provided after hours, weekends and holidays.

E. Franchisee shall keep and preserve, during the term of the franchise and for three years thereafter, full, complete, and accurate records of:

1. Customer accounts in a manner that clearly identifies the number of customers within the City and subject to the franchise fee. These records are subject to review by the City Manager at any reasonable time;

2. Specific cost items, such as disposal fees, fuel, and similar items that may provide the basis for future rate increases due to unusual circumstances; and

3. These records are subject to review by the City Manager at any time City staff has been asked to review special rate increase requests.

F. Franchisee shall be required to collect and dispose of large bulk items on a 24-hour notice with a maximum charge and any limitations to be set by the City Council.

G. Franchisee shall provide a minimum of one "self-haul" bulky item Collection opportunity for residential customers per year.

H. Franchisee shall retain ownership of automated containers provided to residents for the purpose of storing Solid Waste. Franchisee shall replace and/or repair damaged automated containers during the term of the franchise agreement.. (Ord. 2006-02)

#### **11.20.140 Transfer of Solid Waste by Franchisee.**

Nothing in this chapter shall be construed to prevent the transfer of Solid Waste within City limits from Collection to disposal vehicles; provided, that such transfer stations should not be conducted in violation of any state law or county or City ordinance. Where the City operates a transfer station, users of the station shall follow the rules established for the station by the City Manager.

#### **11.20.150 Charges for Service.**

A. When issuing a franchise extension, the City Council shall approve the amount of service charges. After approval, a charge for the Collection of Solid Waste shall be imposed by the Franchisee on the owner or person in control of each residential, Commercial or individual property, or other entity subscribing to Solid Waste Collection Service. The amount of such charges may be changed, from time to time, by the Franchisee after written approval by the City Council and, when necessary as determined by the City, subject to the hearing and majority protest provisions of Article XIID, Section 6 of the California Constitution (commonly referred to as Proposition 218).

B. All proposed revisions in the charge schedule must first be submitted to the City Council for review. Rates shall not be adjusted more than once annually, except to accommodate unforeseen circumstances justifying an increase. (Ord. 93-03)

#### **11.20.160 Mandatory Collection and Payment of Charges.**

A. The accumulation of Solid Waste constitutes a menace to the health, welfare, and safety of inhabitants of the City, and the orderly and regular Collection of Solid Waste is necessary to prevent the spread of disease, and the creation of health menace and fire hazards.

B. All occupants shall dispose of Solid Waste through the regular Solid Waste Collection Service, and shall be liable for payment to the City, or to the Franchisee, for Solid Waste Collection charges.

C. The obligation to pay the charges provided in this chapter is upon the legal owner or owners of the residential unit or business so served. Nothing in this section, however, shall prevent an arrangement or the continuance of an arrangement under which payments for Solid Waste Collection services are made by an occupant or any agent, on behalf of the owner; provided, any such arrangement shall not affect the legal owner's obligation for payment of the charges for services rendered.

D. Every occupant of the City shall be billed periodically for the charges established pursuant to this chapter. Should any person fail, refuse, or neglect to pay such bill within 30 days after the day that the same is rendered, then, a penalty equal to 10% of the amount of the bill will be added to the bill and the sum together with any costs incurred by the Franchisee, may be recovered by the Franchisee.

E. Should the occupant of any property fail or refuse to pay the established charge, then the Franchisee shall advise the City Manager. (Ord. 96-17; Ord. 2017-07)

#### **11.20.164 Failure to Pay Franchisee for Solid Waste Collection.**

A. An account is deemed delinquent if payment for Collection Services has not been received within 15 days after the last day of the normal billing period for which service was rendered. Upon determination of delinquency, the Franchisee shall give written notice to the delinquent account holder that the bill is now overdue and payable in full and shall attempt to collect payment through all available means, within 30 days of the date of such notice.

B. Provided adequate arrangements for payment have not been made between the Franchisee and delinquent account holder within 60 days of the end of the earliest unpaid billing period, the franchisee may assign the total unpaid bill amount to the City Manager for collection. The assignment shall provide all pertinent data including the name and address of the residence owner billed, address and parcel number of the property billed, dates of the period of service unpaid, amount due and certification that the billing procedures pursuant to subsection A of this section have been fulfilled.

C. The delinquent bill presented by the Franchisee to the occupant or legal owner pursuant to subsection A of this section, shall include a written notice warning that nonpayment within 60 days of the end of the earliest unpaid period may result in assignment of the debt to the City for collection, may include collection charges and may result in the recordation of a lien against the property to which service was rendered.

D. Upon receipt of assignment of the debt, the City Manager shall advise the debtor in writing of the assignment, that a minimum fee of 10% of the bill amount is imposed in all collection cases filed with the City, that an additional \$30.00 lien fee will be charged in all cases where the filing of a lien with the county auditor is necessitated, and that 30 days' notice is given to permit payment of the debt to the City to avoid payment of the lien fee and to avoid a special assessment against the property in the amount of all above-mentioned fees and charges.

E. Originally billed amounts which are collected by the City shall be paid to the Franchisee on a quarterly basis. All fees and lien charges collected shall be retained by the City. (Ord. 96-17; Ord. 2017-07)

#### **11.20.168 Special Assessment Collection.**

A. The City Manager may initiate proceedings to make delinquent Solid Waste Collection Service fees and collection charges a special assessment against properties for which such debts were assigned to the City for collection.

B. A report of delinquent charges shall be transmitted to the City Council, which shall fix a time, date and place for hearing the report and any protests or objections thereto.

C. The City Council shall cause notice of hearing to be mailed to the owner of real property to which service was rendered not less than 10 days prior to the date of hearing. At the time fixed for the hearing, the City Council shall hear any objections of the legal owner liable to be assessed for delinquent accounts. The City Council may make such revisions to the report as it deems just and if satisfied with the correctness of the report as submitted or revised shall confirm or reject it by resolution. The decision of the City Council on the report and on all protests or objections thereto are final and conclusive.

D. Upon confirmation of the report by the City Council, the delinquent charges contained therein shall constitute a special assessment against the property and shall be forwarded to the San Diego County Auditor as provided by Sections 39580 through 39586, inclusive, of the Government Code of the State of California, to be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and procedure of sale as provided for delinquent, ordinary real property taxes. The assessments are subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal taxes with which it has parity. The lien shall continue until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes are applicable to such special assessments.

E. There is created in the general fund an account entitled "Property Owners' Delinquencies for Refuse Collection Service." This account is funded from Solid Waste services and shall be credited with such delinquencies as are collected by the county tax collector or otherwise collected for release of lien remitted to the City. The City will in turn, debit the account for payment to the franchisee of delinquencies collected exclusive of fees and charges imposed by the City. Collection fees and charges imposed by the City shall be cleared to a general revenue account. (Ord. 96-17; Ord. 2017-07)

#### **11.20.170 Implementation and Enforcement of Mandatory Recycling.**

A. Diversion of Recyclable Materials (including, as provided in Chapter 11.23, Organic Waste) from the City's waste stream is required by all Residential, Commercial, and industrial customers within the City of Encinitas as set forth by resolution of the City Council.

B. The City Manager or Designee shall have responsibility for the enforcement of all provisions of this chapter. Violations of these regulations will be prosecuted in the same manner as other violations of the City Code, including but not limited to those specified in Chapter 11.23; however, nothing in the regulations shall prevent the authorized agents or deputies from efforts to obtain voluntary compliance by way of notice of violation, warning, or by other educational means. (Ord. 2006-02)

#### **11.20.180 Payment Under Protest.**

Any occupant of any premises, which has been billed for Solid Waste Collection Service, and who desires to contest the legality of the charge billed, shall make payment of such charge under protest and, at the same time, file a written statement of such protest with the City Manager. Within 30 days after the date of filing, the City Manager shall notify the protesting occupant of the decision which may be appealed to the City Council. (See Chapter 1.12.)

#### **11.20.190 Title to Solid Waste and Recyclables.**

A. Prior to Collection of Solid Wastes within the City by Franchisee, the property owner shall retain title of Solid Wastes and Recyclables. Upon Collection of Solid Wastes and Recyclables by the Franchisee, City retains title of all Solid Waste and Recyclables collected in the City, to include without limitation, the control of its disposition.

B. City shall retain the title to all residential and Commercial Recyclables placed in containers for collection by Franchisee. This title shall include, without limitation, the control of the disposition of Residential and Commercial Recyclables. (Ord. 2006-02)

**SECTION 3.** The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment. Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that anyone or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION 4.** If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of

competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

**SECTION 5.** This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED** at a regular meeting of the City Council of the City of Encinitas, California held on the \_\_\_\_\_ day of \_\_\_\_\_ 2021, and thereafter,

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Encinitas, California, on the \_\_\_\_ day of \_\_\_\_\_ 2021, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
Catherine S. Blakespear, Mayor

**ATTEST:**

\_\_\_\_\_  
Kathy Hollywood, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Leslie E. Devaney, City Attorney