

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, REPEAL AND REPLACE CHAPTER 6.06 (“GARBAGE AND REFUSE”) OF TITLE 6 (“HEALTH AND SANITATION”) OF THE COMMERCE MUNICIPAL CODE

WHEREAS, the City is responsible for preparing and submitting an Annual Recycling Report to CalRecycle to demonstrate compliance with all applicable recycling regulations and,

WHEREAS, the Commercial Recycling Mandates have significantly increased staff’s business outreach efforts, data gathering needs, and reporting responsibilities; and

WHEREAS, staff presented several reports to the City Council regarding commercial refuse management and the need to modify its commercial refuse collection system; and

WHEREAS, Council approved modifying the Municipal Code to discontinue issuing licenses to recycling haulers, allow a one-time transfer of a business license to the hauler’s parent company, enforce the mandates including suspending and terminating business licenses for non-complying haulers, and prepare an agreement template for haulers to continue operating in the City.

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

SECTION 1: Chapter 6.06 (“Refuse Management”) of Title 6 (“Health and Sanitation”) of the Commerce Municipal Code is hereby revised to read as follows:

“CHAPTER 6.06”

REFUSE MANAGEMENT

Sections:

6.06.010	Legislative policy.
6.06.020	Definitions.
6.06.030	Refuse and Recycling Hauler licensing.
6.06.040	Limitations on licenses.
6.06.045	Transfer restrictions.
6.06.050	Revocation of licenses.
6.06.060	Revocation of licenses – procedure for suspension or revocation.

6.06.070	Licensed hauler fee; payment and penalties.
6.06.080	Unlawful removal of recyclables; scavenging, penalties.
6.06.090	Transporting.
6.06.100	Equipment
6.06.110	Refuse containers
6.06.120	Placement of containers – commercial
6.06.130	Placement of containers - residential

6.06.010. Legislative policy.

The City Council finds and determines that the storage, accumulation, collection and disposal of garbage, trash, rubbish, debris and other discarded matter, goods and material is a matter of great public concern, in that improper control of such matter creates a public nuisance, can lead to air pollution, fire hazards, insect breeding and rat infestation and other problems affecting the health, welfare and safety of the residents of this and surrounding communities. The City Council further finds that the periodic collection of garbage, rubbish and other refuse from all places of business in the City benefits all occupants of businesses within the City and therefore all occupants as hereinafter defined are made liable for the payment of such fees as may be approved by the City Council. The City Council further declares that the regulations in this chapter are designed to eliminate or alleviate such problems.

(Ord. 332 §1(part), 1983: Ord. 143 §1(part), 1969)

6.06.020. Definitions.

As used in this Chapter, the following definitions shall apply. For purposes of this Chapter, these definitions shall supersede any other definitions of the same terms in this Code.

AB 939 means the State Recycling Law, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 and following).

Agency means the City of Commerce.

Agency Director means the City Administrator, including his or her designee.

Authorized Recycler means any person or business entity which lawfully collects, accepts, transports or otherwise processes recyclable materials from generators for a fee or profit through a proper permit, business license, agreement or other regulatory structure or authorization issued by Agency.

Business means any commercial entity, including, but not limited to: proprietorship, firm, partnership, person in representative or fiduciary capacity,

association, venture, trust, corporation which is organized for financial gain or for profit; or non-profit corporation or entity, or industrial or manufacturing, restaurant, retail facility, office, markets, office buildings, hotels, motels, shopping centers, and theatres.

City means the City of Commerce, a municipal corporation of the State of California, in its present incorporated form.

City Agent means any employee or agent of the City designated by the City Administrator or the City Council as being responsible for directing and collecting and providing for the disposal of garbage, rubbish, and other refuse or any persons or corporations or the employee or agent thereof, with whom the City may contract for the collection and/or disposal of garbage, rubbish, and other refuse.

Collect or Collection means to take physical possession of and remove solid waste or recyclable materials at the place of generation.

Commercial Facility(ies) means any facility(ies) that is not a residential facility, including but not limited to, a commercial facility, restaurant, retail facility, office, manufacturing or industrial facility, markets, office buildings, hotels, motels, shopping centers, theatres, and multi-family dwelling units.

Compost is defined in State law (Public Resources Code Section 40116) as the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal waste stream or which are separated at a centralized facility. Compost may also include the product of anaerobic digestion or other conversion technologies.

Compostable Material or Compostables mean green waste and other material that can be broken down into or otherwise become part of, usable Compost in a safe and timely manner, such as for use as soil conditioning material. Compostable Material includes also waste such as food scraps, soiled paper, and plant trimmings, vegetable, yard and wood wastes which are not hazardous waste, disposable plastic food service ware and bags if labeled "compostable" in accordance with the Department of Environment regulations for easy identification, meeting the ASTM Standard Specification (D6400) for compostable plastics, and consistent with State labeling law (California Public Resources Code Section 42359) that any plastic bag or food container labeled "compostable" must meet the ASTM Standard Specification for compostable plastics.

Customer means a generator that contracts for or receives solid waste/recycling removal services from a franchise refuse hauler or authorized recycler.

Disposal means the final disposition of solid waste at a permitted landfill or other permitted solid waste disposal facility, as defined in the California Public Resources Code Section 40192.

Diversion or Divert means the reduction or elimination of solid waste disposal in accordance with California Public Resources Code Section 41024.

Food Vendor means any and all sales outlets, stores, shops, vehicles or other places of business located or operating within the City of Commerce that operate primarily to sell or convey foods or beverages to consumers.

Franchise means a commercial solid waste collection franchise contracted for or issued by the City.

Franchise Fee means a percentage of contractor's gross receipts for residential and commercial refuse arising out of the performance of services, including, but not limited to charges and receipts from recycling salvage or reclamation.

Franchised Hauler means a hauler holding a franchise, contract, license or permit issued by the City.

Generator means an owner or responsible party for a commercial facility(ies) or business, including non-residential property which generates recyclable or compostable materials as a result of its business, commercial facility(ies) or property activity. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator.

Hauler means any person or commercial entity which lawfully collects, hauls or transports solid waste for a fee.

Landfill means a permitted disposal site which accepts solid waste.

Multi-family Dwelling Units means a residential structure having multiple residences.

Recycle or Recycling means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place as defined in the California Public Resources Code Section 40201.

Recyclable Materials means materials that have been separated from the solid waste stream prior to disposal and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place and that are not landfilled. Recyclable materials include any materials identified by the Agency Director for which a market exists, including, but not limited to plastic bottles and jars, paper,

cardboard, glass, newspaper, metal containers, cans, as well as compostable materials such as green waste or food waste.

Responsible Party means the individual or entity responsible for the Generator's management of solid waste and/or recycling at the Generator's Commercial Facility, Business or non-residential property.

Rubbish means non-putrescible solid waste such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber-by-products and litter.

Scavenging or Scavenger means the uncontrolled and unauthorized removal of recyclable materials at any point in the solid waste management system.

Self Haul or Self Hauling means a Generator or Responsible Party who transports his or her own recyclable or compostable materials to a recycling facility by using a vehicle owned by that Generator or Generator's employees or the Responsible Party rather than using the hauling services of a Franchise Hauler or Authorized Recycler.

Solid Waste means all putrescible and non-putrescible solid, semi-solid, and liquid wastes, including refuse, paper, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include hazardous waste or low-level radioactive waste defined in the California Health and Safety Code Section 25117 and 25141.

Source Separated or Source Separation means the process of removing recycling materials from solid waste at the place of discard generation, prior to collection, into separate containers that are separately designated for recyclables, compostable or refuse for the purpose of recycling.

Trash means material that is designated for landfill disposal by the collector and does not include either recyclable or compostable materials. The term refuse does not include hazardous waste, as defined in the California Health and Safety Code Sections 25117 and 25141.

6.06.030. Refuse and Recycling Hauler licensing.

Effective April 1, 1984:

- A. Any refuse or recycling collection company granted a hauler license by the City for such purpose shall thereupon have the non-exclusive right to collect

industrial and commercial refuse and/or recycling materials generated in the City.

- B. Any company furnishing such collection services to any business location in the City shall possess a current hauler's license issued by the City. All licensed haulers shall operate within the guidelines as set forth in the license. These guidelines may include, but will not be limited to, the amount of the annual license fee, standards for equipment and vehicle maintenance, a schedule of reasonable fees to be charged to customers for specific services, and other guidelines that the City Council may deem necessary to impose from time to time. All guidelines shall be established or modified by City Council resolution. No such company shall be entitled to render such services after April 1, 1984, unless it shall render its services in compliance with the terms of the non-exclusive hauler license.
- C. Any company other than the City's licensed haulers, which engages in the business of commercial and/or industrial refuse and/or recycling material collection in the City after April 1, 1984, shall be guilty of a misdemeanor punishable as provided generally for violations of the Commerce Municipal Code.

(Ord. 341 § 1, 1984; Ord. 332 § 1(part), 1983; Ord. 143 § 1(part), 1969).

6.06.040. Limitations on licenses.

No more than twelve licenses shall be issued and outstanding at any given time under the provisions of Section 6.06.030; provided, however, that this limitation shall not prevent the renewal of such license to licensees who, as of December 31, 1983, were licensed for the collection of industrial and commercial refuse and/or recycling material under the provisions of Chapter 5.04. Notwithstanding the foregoing sentence, no license which is allowed to lapse shall be reissued.

(Ord. 391 § 1, 1986; Ord. 347 § 1(part), 1984; Ord. 143 § 1(part), 1969).

6.06.045. Transfer restrictions.

Licenses issued under the provisions of Section 6.06.030 shall not be transferable, except as follows:

- A. To the spouse, children, grandchildren, son-in-law or daughter-in-law of the licensee; or
- B. To the owner of an existing and valid outstanding license;
- C. To the owner of an acquired existing and valid licensed refuse and/or recycling company to which the hauler license would transfer to and operate solely under the parent company **name within six months from adoption of this ordinance**; or
- D. Where there is an involuntary transfer and the City Council determines that the voiding of the license involved would constitute unreasonable hardship.

Any other transfer or attempted transfer of any such license shall immediately void such license.

(Ord. 463 §1m 1992; Ord. 347 §1(part), 1984).

6.06.050. Revocation of licenses.

- A. Any license issued under this chapter is subject to revocation for cause in the manner provided in this section.
- B. Complaints against any licensee seeking a revocation of license must be in writing and must set forth one or more of the grounds hereinafter enumerated, except that a written report of the sheriff or any officer or employee of the City disclosing violations of any law by the licensee or his agents or employees shall be deemed a complaint within the meaning of this section. All complaints made by officers or employees in their official capacity must be verified.
- C. Except as otherwise specifically provided in this chapter, the following are the grounds which shall, exclusively, constitute a basis for the revocation of licenses:
 - 1. When the continuance of the operations of the licensee under such license shall be contrary to the public health, safety, peace, welfare or morals, or shall be found to constitute a public nuisance;
 - 2. Violation of any law or any provision of this code; or
 - 3. When a hauler is no longer in business; or
 - 4. When a licensee reports to the City zero customers in Commerce for at least a 12-month period; or

Failure to pay hauler license fees for 120 days or more.

(Ord. 405 § 1, 1987).

6.06.060. Revocation of licenses – procedure for suspension or revocation.

The City Administrator shall suspend any such license issued pursuant to this chapter when he/she shall find that the licensee has violated any condition imposed upon such license or any provision of this code or any provision of law or is otherwise threatening the public peace, health, safety, morals or general welfare. The suspension shall become effective upon the mailing of written notice thereof to the licensee by the City Administrator. Such notice shall state the grounds for suspension. If no appeal is taken from such order within ten days of the mailing of such written notice, the license shall be deemed revoked. If, within ten days of the mailing of the notice of suspension, a written appeal from such order is filed with the City Clerk, the matter shall be placed upon the next most convenient City Council Agenda for hearing, at which time said licensee shall show cause why the license should not be revoked. The proceedings before the Council shall be an informal administrative hearing and the rules of evidence, as generally applied in judicial proceedings, shall not be applicable thereto except

that the substance of said rules shall be observed in conjunction with the evidence presented to the Council for its consideration. Written notice of the time and place of the hearing shall be given by the City Clerk to the licensee, and to any other person requesting the same in writing, at least five days in advance of such hearing.

(Ord. 405 § 2, 1987).

6.06.070 Licensed hauler fee, payment and penalties

Licensed hauler fees are payable to the City quarterly and are a percentage of contractor's gross receipts for residential and commercial refuse and/or recycling material arising out of the performance of services, including, but not limited to charges and receipts from recycling salvage or reclamation.

Contractor shall file, on or before renewal of Contractor's business license, with the Director of Finance, a written audited statement of gross receipts ("Statement") in a form approved by the Director of Finance, prepared by the Contractor's Controller or Financial Officer or a certified public accountant, showing all such gross receipts actually received by Contractor during the preceding quarter. Such Statement shall accompany the quarterly licensed hauler fee payment.

Penalties shall be assessed as follows:

- 10% penalty for payments 30 days past due;
- 25% penalty for payment 60 days past due; with
- Interest on the amount of the non-exclusive hauler fee payment at a rate of 0.75% per month or 9% per annum.

The penalty and interest charges are subject to change by City Council resolution as part of the City's policy on delinquent Contractor's books and records, at any reasonable time, to verify the accuracy of the contents of any Statement. The Director of Finance may order an audit of Contractor's books and records to determine the accuracy of the contents of any Statement; if any such City-ordered audit discloses an understated amount of gross receipts on any Statement equaling 3% or more, the cost of the audit shall be borne by the Contractor, in all other cases, such an audit shall be borne by the City.

6.06.080. Unlawful removal of recyclables; scavenging, penalties

No person shall remove solid waste, recyclable solid waste or yard waste from a solid waste collection and/or recycling cart, bin or other container or from the place where it has been put for collection by the City's solid waste collection agent, except by:

- A. Those persons entitled to the use of such solid waste collection and/or recycling cart, bin or other container or place for the disposal and/or recycling of their solid waste; and
- B. The City's solid waste and/or recycling collection agent.

In addition to the penalties set forth by the State and/or federal laws, any person violating any of the provisions of this section shall be deemed guilty of an infraction and, upon conviction thereof, shall be punishable by a fine of fifty dollars for the first offense and not less than one hundred dollars nor more than one hundred fifty dollars for a second or subsequent conviction within a twelve-month period.

(Ord. 589 §2, 2005).

6.06.090. Transporting

- A. No person shall collect, carry, convey or transport refuse and/or recyclables on or through any street, alley or public place in the City, except:
 - 1. An employee of the City;
 - 2. An employee of an authorized contractor of the City or
 - 3. A person responsible for the generation of the refuse and/or recycling material from any residential unit, commercial or industrial business with the City.
- B. No person shall haul, carry or transport any refuse and/or recycling through the City or along or over any public street or public place in the City except in motor vehicles that are so constructed and maintained that the contents thereof will not be odorous. The motor vehicles shall be so loaded and operated that none of their contents will fall or spill there from, and every vehicle used for such purpose shall be kept in a clean and sanitary condition. Should such transportation cause leakage or deposit of said materials on or along City streets, public rights-of-way or other City property, the transporter shall be responsible for immediate clean-up and bear the cost of removal.
- C. A resident or property owner responsible for the generation of refuse and/or recyclables for their premises in the City shall keep such premises in a clean and sanitary condition, and shall not cause or permit any refuse, solid waste or other combustible waste matter or any non-combustible waste matter, greenwaste or recyclable material to accumulate on the premises for a period in excess of more than fourteen days.
- D. Gardeners. Any person engaged in the business of gardening is authorized to collect, remove, and dispose of garden trimmings as may be required in such business.

6.060.100 Equipment

- A. All private refuse and/or recycling collection fleets shall operate alternative-fuel collection vehicles within the City or install a California Air Resources

Control Board (CARB) approved exhaust control device on all non-alternative fuel collection vehicles operating within the City of Commerce. A pre-owned heavy duty vehicle equipped with approved control devices means that the device has been verified or certified by CARB. To be considered fitted with an approved control device, all diesel exhaust from the vehicle must be vented through such a device that has been fitted at the time of vehicle purchase or fitted by a certified device installer at the time the device is delivered to the operator.

- B. The City Administrator or his/her designee shall arrange for semi-annual inspections of such vehicles, as to state of repair and operating condition. Between inspections, collectors shall allow in service only those trucks, trainers or other conveyances that are in proper repair and safe operating condition.

6.06.110 Refuse containers

It shall be the duty of every person (hereafter "customer") in possession or having the care or control of any premises in the City where refuse accumulates or exists, to cause all such refuse to be placed and kept in containers as specified in this code.

- A. Containers in Automated Refuse Collection Areas. Customers whose premises are located in areas designated by the City to be served by an automated refuse collection program shall place their refuse in containers only in conformity with the following:
 - 1. Materials resulting from commercial landscaping or building construction, demolition, alteration or repair such as, but not limited to, dirt and sod, rock, brick, concrete, plaster, roofing materials, lumber, construction metal, and large appliances must not be placed in automated refuse containers. For disposal of such materials, temporary use of bins and/or roll-off containers are available through the City's authorized contractor. Temporary use of bins and/or roll-off containers provided from other than the City's authorized contractor is prohibited and shall be impounded.
 - 2. A set of three containers for residential refuse, co-mingled recycling and greenwaste recycling shall be provided by the City's franchise residential hauler free of charge for all single family premises up to and including three units. Additional containers shall be provided if the City or contractor determines the necessity. Charges for the use of such additional containers shall be in an amount set by resolution of the City Council.
 - 3. All residents shall utilize the City's automated collection system except those permitted otherwise by the City or its franchise hauler. The permitted usage of manually-collected containers shall have a capacity not to exceed thirty-three gallons each and shall not exceed

fifty pounds in weight per container when loaded, including the weight of the container.

- B. Non-automated Refuse Collection Areas. Premises on which commercial or industrial uses are located shall utilize City-licensee authorized refuse and recycling containers. The permitted usage of manually-collected containers shall have a capacity not to exceed thirty-three gallons each and shall not exceed fifty pounds in weight per container when loaded, including the weight of the container.
- C. Restaurant Food Waste. Restaurant-generated food waste must be placed in closed plastic bags prior to depositing into any collection container. Cooking oil must be disposed of separately and not deposited into the sewer system.
- D. Medical Waste. Containment, storage, and disposal of medical waste shall be in compliance with the Medical Waste Management Act (California Health and Safety Code).

6.06.120 Placement of Containers – Commercial

Refuse containers servicing businesses shall be placed and maintained as follows:

- A. Be kept on private property in accordance with the provisions of this code, except:
 - 1. When placed at authorized locations for collection; or
 - 2. When otherwise directed by the City or licensed hauler.
- B. Not impede the flow of traffic; and
- C. Not reduce the required number parking spaces for the business.

6.06.130 Placement of Containers – Residential

Refuse containers servicing residential units shall be placed and maintained as follows:

- A. For premises serviced with automated containers for refuse and recycling, all containers shall be placed on private property, but not necessarily out of public view.
- B. These containers shall not be placed within the right-of-way of an alley.
- C. These containers may be placed out for collection on the evening prior to trash/recycling collection day and shall be placed back onto private property on the day of collection.

SECTION 2. Severability

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this

Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 3. Effective Date

This Ordinance shall become effective thirty (30) calendar days from and after its adoption.

SECTION 4. The City Clerk shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this _____, 2018.

Oralia Rebollo
Mayor

ATTEST:

Lena Shumway
City Clerk