



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
August 7, 2008

Honorable Members of the
Law and Legislation Committee

Subject: Hours of Operation for Residential and Commercial Garbage Collection

Location/Council District: All

Recommendation: Discuss and provide direction on amending Garbage Collection Hours related to residential and commercial properties located in close proximity to each other.

Contact: Edison Hicks, Integrated Waste General Manager, 808-4949

Marty Strauss, Integrated Waste Planning Superintendent

Presenters: Edison Hicks, Integrated Waste General Manager

Department: Utilities

Division: Solid Waste

Organization No: 3361

Description/Analysis

Issue: At the request of the city council, staff is bringing forward for discussion and direction the garbage collection hours of operation relating to residential and commercial solid waste. Existing City Code permits the collection of garbage between the hours of 4 a.m. and 7 p.m. of the same day. The City of Sacramento has experienced mixed use development areas which require both residential and commercial garbage collection services. Currently, commercial garbage collection in these mixed use areas begins at 4 a.m. to reduce traffic during morning commute hours.

At the March 2007, Solid Waste Authorities Board meeting, SWA approved an administrative rule attached authorizing the SWA General Manager to regulate the collection time for commercial garbage.

Policy Considerations: Approval of the resolution supporting the Solid Waste Authority's administrative rule addressing collection times for commercial waste will support the City Council goal to have safe and clean neighborhoods.

Environmental Considerations: Approval of the resolution adopting the SWA administrative rule to regulate the time of commercial waste collection is exempt from CEQA under Section 15308, Actions to by Regulatory Agencies for Protection of the Environment. The regulation of commercial waste collection start times mitigates noise for neighboring residential properties during the early morning hours.

Rationale for Recommendation: Traffic congestion will be reduced by continuing to allow the start of commercial waste collection in commercial corridors prior to the morning commute and/or the opening of businesses in morning.

Financial Considerations: Changing commercial waste collection start time from 4 a.m. to 6 a.m. may cause commercial collection routes to take longer to complete due to increased traffic levels during commute time, adding to the labor cost.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: 
Marty Strauss
for Integrated Waste Planning Superintendent

Approved by: 
Edison Hicks
Integrated Waste General Manager

Recommendation Approved:


RAY KERRIDGE
for City Manager

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Background

Existing City Code limits the collection of garbage between the hours of 4 am and 7 p.m. The Solid Waste Division schedules commercial routes to limit collection to the hours from 6 a.m. to 7 p.m. when there is residential properties within 50-yards of the collection site.

Since starting the above practice the City of Sacramento has experienced mixed use development areas which require residential collection on the upper floors and commercial collection on the ground level floors. Current practice is to treat the solid waste as commercial and start pick up at 4 a.m. This practice was implemented to avoid interfering with businesses in the morning hours when they are opening to customers and avoid unnecessary safety issues by having waste collection vehicles on commercial streets during morning commute hours, thus reducing traffic safety issues with both vehicles and pedestrians commuting to work.

At the March 2008 board meeting, the Solid Waste Authority adopted the Business Recycling Ordinance, attached, which also included an administrative rule authorizing the General Manager of the SWA to regulate the start times for commercial waste collection. The administrative rule was adopted in response to numerous complaints by residents living near commercial development being woken up in the early morning hours by the noise of commercial waste vehicles collecting waste. The administrative rule gives the SWA general manager the authority to amend the hours of collection to specific geographic areas and require commercial waste not be collected any earlier than 6 a.m. Since adoption of this ordinance commercial franchise haulers have cooperated in starting commercial waste collection no earlier than 6 a.m. when near residential development.

Solid Waste Services receives noise complaints from residents in mixed use development and single family residences neighboring commercial developments. In response, Solid Waste Services staff identifies the franchise haulers operating in the area and contacted them to discuss rerouting to mitigate the noise problem. To date the franchise haulers contacts have cooperated by changing their route times to avoid the noise complaints.

Attachment 2

CITY CODE
SECTION 13.10.340 Hours of collection.

“No garbage, refuse or waste matter shall be collected within the city except between the hours of four a.m. and seven p.m. (or eight p.m. during daylight saving time) of the same day. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.03.316)”

SWA ORDINANCE NO. 17

AN ORDINANCE AMENDING SACRAMENTO REGIONAL SOLID WASTE AUTHORITY CODE, ORDINANCE 16, TO ADD TITLE IV WHICH ESTABLISHES BUSINESS RECYCLING REQUIREMENTS, AND TO ADD TITLE V WHICH CODIFIES ALL ENFORCEMENT MECHANISMS AND PROCEDURES; AND TO AMEND SECTION 1.01.020 (d) OF TITLE I AND SECTION 2.01.030 (f) OF TITLE II RELATING TO DEFINITIONS; AND TO REPEAL SECTIONS 1.01.450 THROUGH 1.01.500 OF TITLE I, SECTIONS 2.01.240 THROUGH 2.01.290 OF TITLE II, SECTIONS 3.01.110 (A) (B) (C) (D) (E); 3.01.120 (A) (B), AND SECTIONS 3.01.130 THROUGH 3.01.160 OF TITLE III RELATING TO ENFORCEMENT

The Board of Directors of the Sacramento Regional Solid Waste Authority ordains as follows:

SECTION 1. Sections 1.01.450 through h 1.01.500 of Title I, Ordinance 16, of the Sacramento Regional Solid Waste Authority Code are hereby repealed.

SECTION 2. Sections 2.01.240 through h 2.01.290 of Title II, Ordinance 16, of the Sacramento Regional Solid Waste Authority Code are hereby repealed.

SECTION 3. Sections 3.01.110 (A), (B), (C), (D), (E); and Sections 3.01.120 (A), (B); and Sections 3.01.130 through 3.01.160 of Title III, Ordinance 16, of the Sacramento Regional Solid Waste Authority Code are hereby repealed.

SECTION 4. Section 1.01.020 (d) of T itle I, Ordinance 16, is hereby amended in its entirety to read as follows:

1.01.020 (d)

“Collection” means the act of collecting and removing solid waste or recyclable material at the place of waste generation.

SECTION 5. Section 2.01.030 (f) of Title II, Ordinance 16, of the Sacramento Regional Solid Waste Authority Code, is hereby amended in its entirety read as follows:

2.01.030 (f)

“Collection” means the act of collecting and removing solid waste or recyclable material at the place of waste generation.

SECTION 6. Titles IV and Titles V, of the Sacramento Regional Solid Waste Authority Code are hereby added to the Sacramento Regional Solid Waste Authority Code which establishes Business Recycling requirements and establishes enforcement mechanisms and procedures.

TITLE IV

Chapter 4.01 BUSINESS RECYCLING

4.01.010 Purpose and Declarations

A. It is the intent and purpose to promote recycling by adding Title IV to the SWA Code: (a) requiring businesses and non-residential properties in the Sacramento Regional Solid Waste Authority (hereinafter referred to as “SWA”) Region to keep recyclable materials separate from all other solid waste for recycling (b) requiring businesses and non-residential properties to provide for the collection of recyclable materials and (c) requiring businesses and non-residential properties to establish educational programs concerning recycling.

B. It is the further purpose of Title IV to provide a mechanism to require the implementation of recycling programs for businesses and non-residential properties within the SWA Region to thereby enable the SWA member agencies to meet and maintain the solid waste diversion requirements set forth in the Public Resources Code section 41780 (a) (2).

C. It is also the intent of Title IV to provide for the uniform regulation of business and non-residential property recycling and for the collection of recyclable materials in the SWA region.

D. If any portion of Title IV is for any reason held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining part of Title IV.

4.01.020 Applicability

Title IV shall be applicable only within the SWA Region of Sacramento County.

4.01.030 Definitions

Unless the context otherwise requires, the definitions set forth in Title IV shall govern the interpretation of Title IV. When consistent with the context, words used in the present tense include the future tense, words in the plural number include the singular, and words in the

singular number include the plural. The word "shall" is always mandatory and not merely discretionary.

- a) "Authorization" means the process of approving a recycler for collection and removing recyclable materials from businesses and non-residential properties, by the General Manager/Engineer, and/or his or her designee, pursuant to Title IV Section 4.01.090.
- b) "Authorized Recycler" means any person or business entity who lawfully collects, accepts, transports or otherwise processes recyclable materials from businesses and non-residential properties, owners, or generators for financial gain or profit and has been certified and approved by the General Manager/Engineer, and/or his or her designee, pursuant to Title IV.
- c) "Board" means the Board of Directors of the Sacramento Regional Solid Waste Authority.
- d) "Business" means any commercial entity; 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, (restaurant, retail facility, office, markets, office buildings, hotels, motels, shopping centers, theaters, including commercial and industrial entities), but not including multifamily dwelling units, located in the SWA Region.
- e) "Certificate of Operation" means the license that a recycler must obtain from the SWA before it may collect recyclable materials in the SWA region.
- f) "Clerk of the Board" means the Clerk of the SWA Board.
- g) "Collection" means the act of collecting and removing solid waste or recyclable materials at the place of generation.
- h) "Commercial Hauler or Hauler" means any person who collects, hauls, or transports commercial solid waste for a fee by use of any means, including, but not limited to, a dumpster truck, roll-off truck, a side-load, front-load, or rear-load garbage truck, or a trailer.
- i) "Commercial Solid Waste" means all solid waste as defined in subdivision (jj) hereof, and generated by commercial and industrial sources, multi-family dwelling units and residential remodel and/or construction removal sources, that is collected by a commercial hauler.
- j) "County" means the County of Sacramento.
- k) "Customer" means an owner or generator that contracts for solid waste removal services and enters into a service agreement with a franchised waste hauler or authorized recycler for recycling services. Where several businesses share garbage containers and service, "customer" refers only to the entity that arranges for the service.
- l) "Franchise" means a commercial solid waste collection franchise issued under the provisions of this Code to a commercial hauler within the SWA Region.
- m) "Franchised Waste Hauler" means a commercial hauler or hauler holding a franchise issued by the SWA pursuant to this Code. A franchised waste hauler may also collect, haul, or transport recyclable materials.

- n) "General Manager/Engineer" means the General Manager/Engineer of the Department of Waste Management and Recycling of the County's Municipal Services Agency.
- o) "Generator" means each business or non-residential property that generates one or more recyclable materials as a result of its business activities or non-residential property activities.
- p) "Multi-Family Dwelling Units" means five (5) or more residential dwelling units located on a single parcel of land.
- q) "National Contracts" means contracts between waste management companies and multi-sited waste generating companies that operate throughout the country.
- r) "Non-Residential Property" means real property that is located in the SWA region and used primarily for: (1) commerce, including but not limited to offices, stores, restaurants, motels, hotels, recreational vehicle parks, theaters, and service stations; (2) not-for profit organizations; and (3) institutional uses, including churches, and hospitals. The term non-residential property shall not include any residential units or undeveloped land.
- s) "Ordinance" means SWA Title IV as enacted through Ordinance 17.
- t) "Owner" means the person who owns a business or non-residential property. An owner also may be a generator.
- u) "Person" means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, or any other entity whatsoever.
- v) "Recycler" means any person or business entity that lawfully collects recyclable material.
- w) "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. recycling does not include transformation as defined in Public Resources Code section 40201.
- x) "Recycling Facility" means those facilities or operations that receive, process, and transfer to market recyclable materials that have been source separated from the solid waste stream.
- y) "Recyclable Material" or "Recyclables" 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 land-filled.
- z) "Recyclable Materials Container" means any box, tub, cart, or other container in maintenance areas that is made of metal, hard plastic or other similar material and is suitable for the collection of recyclable materials pursuant to Chapter 4.01.040.
- aa) "Removal" means the act of removing solid wastes or recyclables from the place of waste generation.
- bb) "Rubbish" means non-putrescible solid wastes such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber by-products and litter.

- cc) "Sacramento Regional Solid Waste Authority" (SWA) means the joint powers authority of Sacramento County and the Cities of Sacramento and Citrus Heights.
- dd) "Scavenger" means individual (s) that are involved in the theft of recyclable materials that businesses, non-residential properties, owners, or generators have placed either in or near automatic lift containers, bins or roll off bins for recyclable materials for collection.
- ee) "Scavenging" means the uncontrolled and unauthorized removal of recyclable materials at any point in the solid waste management system.
- ff) "Self-Haul" when used in reference to recyclable materials generated by a business or non-residential property, owner, or generator means a business or non-residential property, owner, generator or employee designated by the owner or generator, who collects, transports and hauls recyclable materials from the business or non-residential property, in a vehicle owned by either an employee or the entity, to a recycling facility rather than hiring a franchised waste hauler or an authorized recycler to perform this function.
- gg) "Self-Hauling Form" means the form provided by the SWA General Manager/Engineer and/or his or her designee on which a business or non-residential property, owner, or generator certifies that all self-hauling activities will be completed in accordance with the provisions of Title IV or any other applicable law or regulation.
- hh) "Service Agreement" means a written agreement between a franchised waste hauler or authorized recycler and an owner or generator concerning the collection of recyclable materials.
- ii) "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, 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 regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code or medical waste. Solid waste does not include recyclable materials set out for separate collection for the purposes of recycling, and that are not land filled.
- jj) "Source Separate or Source Separated" means the process of removing recyclable materials from solid waste for the purpose of recycling.
- kk) "Subcontract" is a contract assigning some of the obligations of a contract to a third party.
- ll) "SWA" means the Sacramento Regional Solid Waste Authority.
- mm) "SWA Region" means the territorial jurisdictions of any city or county who is a member of the SWA.
- nn) "WMR" means the Department of Waste Management and Recycling of the County's Municipal Services Agency.

4.01.040 Requirements for All Businesses and Non-Residential Properties

A. Each business or non-residential property (whoever contracts for solid waste removal service, whether owners or generators) shall be responsible for ensuring and demonstrating its compliance with the requirements of Title IV and shall:

- 1) Source separate recyclable materials from solid waste;
- 2) Subscribe to a basic level of recycling service that includes, at a minimum, the collection of recyclable materials; and
- 3) Enter into a written service agreement with a franchised waste hauler or authorized recycler; or
- 4) Complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with the provisions of Title IV or any other applicable law or regulation. A copy of such form shall be made available to the General Manager/Engineer, and /or his or her designee, upon request.

B. Each business and non-residential property, owner or generator, shall provide recyclable materials containers, to be used by generators, in maintenance or work areas where recyclable materials may be collected and/or stored.

C. Each business and non-residential property, owner or generator, shall prominently post and maintain one or more signs in maintenance or work areas where recyclable materials are collected and/or stored that set forth what materials are required to be source separated in addition to collection procedures for such materials.

D. Each business and non-residential property, owner or generator, shall notify and instruct employees, in writing, of applicable source separation requirements, including what materials are required to be source separated and how to source separate such materials. A copy of such instruction shall be provided to the General Manager/Engineer, and/or his or her designee, upon request.

E. Each business and non-residential property, owner or generator, shall ensure that recyclable materials generated at their site will be taken only to a recycling facility and not to a landfill for proper disposal.

F. The service agreement or other recycling documents shall be available for inspection by the General Manager/Engineer, and/or his or her designee, at the principal location of the business or non-residential property during normal business hours.

G. Nothing in Title IV shall abridge the right of any business and non-residential property, owner or generator, or any other person, to sell or exchange at fair market value its own recyclable materials which are source separated for reuse and recycling.

H. No franchised waste haulers or authorized recyclers shall be held liable for the failure of its customers to comply with such regulations.

4.01.050 Special Requirements

In addition to any and all requirements that apply to the recycling of recyclable materials throughout the SWA Region under 4.01.40 above, collection service received or provided in the SWA Region shall be subject to the following additional special requirements:

A. All recycling, automatic lift containers and bins provided by a franchised waste hauler or an authorized recycler within the collection area of the SWA Region shall be equipped

with locks and shall remain locked at all times, except when recyclable materials are being deposited or collected in accordance with the provisions of this section;

B. No recycling, automatic lift container or bin within the collection area of the SWA region shall be placed or located in such a manner that blocks or impedes passage through the alley or through any doorway of any building adjoining the alley, notwithstanding that such building may be abandoned or otherwise out of use.

Compliance with the above special requirements shall be the sole responsibility of the business or non-residential property, owners or generators.

4.01.060 Designation of Recyclable Materials

Recyclable materials shall be source separated from solid waste before collection, removal, transportation or disposal pursuant to 4.01.150. The General Manager/Engineer, and/or his or her designee, shall designate recyclable materials that must be source separated by businesses and non-residential properties, owners or generators. Such a designation shall consider materials market conditions and the availability of a cost-effective system for recycling such materials.

Furthermore, all businesses, non-residential properties, owners, or generators are encouraged to consider recycling additional materials, whether or not they have been designated as recyclable materials.

4.01.070 Ownership of Recyclable Materials

A. All recyclable materials placed in automatic lift containers, bins or roll off bins for recyclable materials provided by any franchised waste hauler or authorized recycler sufficient to accommodate the quantity and types of recyclable materials of businesses or non-residential properties, owners or generators shall be considered owned by and be the responsibility of either the franchised waste hauler or authorized recycler. Without permission of either the franchised waste hauler or authorized recycler, no person shall collect recycling materials placed in automatic lift containers, bins or roll off bins for recyclable materials by customers.

B. All recyclable materials placed in recyclable materials containers provided by businesses or non-residential properties, owners or generators, shall be considered owned by and be the responsibility of that business and non-residential property, owner or generator.

C. Except as authorized by Title I Chapter 1.10.040 of the SWA Code and 4.01.100 (Requirements for Recyclers) and 4.01.120 (Self-Hauling) of Title IV hereof, it shall be unlawful for any person to engage in the business of collecting, removing or transporting, or otherwise organize, direct or sponsor the collection, removal or transportation of recyclable materials within the SWA Region without possessing a valid franchise granted by the SWA, or a certificate of operation, or complete and retain on-site a self-hauling form certifying that self-hauling activities will be completed in accordance with the provisions of Title IV.

4.01.080 Requirements for Franchised Waste Haulers

A. Commercial waste haulers shall be "Franchised" pursuant to the provisions of Title I Chapter 1.01.040 of the SWA code and such "Franchise" shall be in full force and effect.

B. Franchised waste haulers shall offer collection service and automatic lift containers, bins or roll off bins for recyclable materials sufficient to accommodate the quantity and types of recyclable materials to all its solid waste customers.

C. Franchised waste haulers shall equip and provide automatic lift containers, bins and roll off bins for recyclable materials locks and/or other suitable features to prevent scavenging of recyclable materials.

D. A franchised waste hauler shall provide a written service agreement to a customer before the franchised waste hauler begins to collect customer's solid waste and/or recyclable materials.

E. Franchised waste haulers may subcontract for collection of recyclable materials, so long as the subcontractor holds a current franchise or is an authorized recycler.

F. Franchised waste haulers shall conduct all of its activities in accordance with all applicable laws, the SWA Code and best management practices. Vehicles, equipment and containers shall be kept in a clean and well-maintained condition.

G. Franchised waste haulers shall not take a customer's recyclable materials to a landfill or other site for disposal, but to a recycling facility.

H. The General Manager/Engineer, and/or his or her designee, may restrict the hours of collection of solid waste or recyclable materials by franchised waste haulers in designated areas. Such restrictions shall be imposed only after promulgation of rules pursuant to section 1.01.390 of this Code which specify the criteria and process for imposing such restrictions.

I. Franchised waste haulers, upon request, shall provide the General Manager/Engineer, and/or his or her designee, with a copy of a service agreement or other document (e.g., receipt from a Recycling Facility) demonstrating that the generator's recyclable materials are being taken to a recycling facility. The service agreement or other document shall be available for inspection by the General Manager/Engineer, and/or his or her designee, at the franchised waste haulers' place of business during normal business hours.

J. SWA staff may audit all franchised waste haulers' records in the SWA region.

4.01.090 Franchised Waste Hauler Service Agreements

Service agreements shall incorporate, but are not limited to, the following terms and conditions:

A. Be clearly labeled as a service agreement;

B. Describe the services to be provided by the franchised waste hauler and the cost for providing such services to the customer;

C. Clearly state the initial term and renewal terms;

D. Allow for any term that is mutually agreed to by the customer and the franchised waste hauler but recognizing that the hauler's franchise must remain in full force and effect throughout the term of the agreement;

E. May contain automatic renewal for successive periods of no longer than one (1) year, unless either party gives written notice of termination by certified or registered mail at least sixty (60) days prior to termination date of the current agreement;

F. May be amended as mutually agreed upon by the customer and franchised waste hauler;

G. Customers are to receive written notice of price increases not less than thirty (30) days prior to the effective date of such price increase;

- H. Franchisees shall respond to customer inquiries regarding the service agreement within 30 days;
- I. Include language stating that collection containers will be removed from the property of a Customer within thirty (30) days of final termination of services to the customer;
- J. Not require customers to pay over three (3) months liquidated damages during the renewal term and over six (6) months liquidated damages during the initial term of the service agreement;
- K. Not require a customer to give a franchised waste hauler the exclusive right to provide recycling services as a condition of a waste hauling contract unless the customer affirmatively indicates that is its desire;
- L. Not require customers to give notice of any offer by a competitor or require customers to give franchised waste haulers the right to respond to such an offer;
- M. National contracts or agreements are exempt from the requirements of contract length and renewal terms; and
- N. Franchises must be in full force and effect for the service agreement to be effective.

The requirements for service agreements contained in this section shall be incorporated into all new service agreements upon enactment of SWA Code Title IV of Ordinance 17 by the Sacramento Regional Solid Waste Authority. Existing service agreements between a franchised waste hauler and a customer executed before the effective date of SWA Code Title IV, shall remain in force for the remainder of the existing contract and shall be governed by the terms and conditions specified in the existing service agreement contracts, provided that such existing service agreements shall comply, to the extent allowable by law, with the new recycling programs established by Title IV.

4.01.100 Requirements for Recyclers

- A. No person shall provide service as a recycler within the SWA Region without having obtained a certificate of operation and becoming an "authorized recycler." Recyclers shall file a certificate of operation application form approved by the General Manager/Engineer, and/or his or her designee, providing the information and documentation that is requested by the General Manager/Engineer, and/or his or her designee, including but not limited to the following:
 1. The name, address and telephone number of the applicant;
 2. A description of the vehicles that the applicant will use to collect recyclable materials, including the make, model, and serial number or Vehicle Identification Number (VIN) of each vehicle; and
 3. Authorized recyclers shall defend, indemnify and hold harmless SWA, the County of Sacramento, the City of Sacramento, the City of Citrus Heights, their respective officials, officers, directors, agents, employees and volunteers from and against any and all demands, claims, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the authorized recycler's activities, except and in proportion to the extent caused by the active negligence or willful misconduct of SWA, the County of Sacramento, the City of Sacramento, the City of Citrus Heights, their respective officials, officers, directors, agents, employees, or volunteers.

4. Without limiting the authorized recycler's indemnification, the authorized recycler shall maintain in force at all times during the term of this authorization certificate and any extensions or modifications thereto, insurance as specified in the addendum of the certificate of operation agreement. It is the responsibility of the authorized recycler to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in the addendum of the certificate of operation agreement.

5. A written statement certifying that the applicant has reviewed and will comply with all of the requirements in the certificate of operation and Title IV.

B. If General Manager/Engineer, and/or his or her designee, determines that the applicant complies with the terms of Title IV, the General Manager/Engineer, and/or his or her designee, shall grant a certificate of operation. The General Manager/Engineer, and/or his or her designee, shall deny an application for a certificate of operation if the General Manager/Engineer, and/or his or her designee, determines that the applicant does not comply with the terms of Title IV.

C. The certificate of operation shall remain in effect for a period of one (1) year.

D. The General Manager/Engineer, and/or his or her designee, may revoke a certificate of operation if the General Manager/Engineer, and/or his or her designee, determines, after providing notice and an opportunity for a hearing, that an authorized recycler has violated the provisions in the certificate of operation or any applicable law.

E. Authorized recyclers shall offer collection service and automatic lift containers, bins or roll off bins for recyclable materials sufficient to accommodate the quantity and types of recyclable materials to all its customers.

F. Authorized recyclers may subcontract for collection of recyclable materials, so long as the subcontractor holds a current franchise or is an authorized recycler.

G. An authorized recycler shall conduct all of its activities in accordance with all applicable laws, the SWA Code and best management practices. An authorized recycler's vehicles, equipment and containers shall be kept in a clean and well-maintained condition.

H. An authorized recycler's automatic lift containers, bins or roll off bins for recyclable materials shall be clearly identified with the name, or recognizable corporate or company logo, and phone number of the authorized recycler that is legible from a distance of fifty (50) feet.

I. Authorized recyclers shall equip and provide to all recycling, automatic lift containers, bins or roll off bins for recyclable materials locks and/or other suitable features to prevent scavenging of recyclable materials.

J. An Authorized recycler shall take a customer's recyclable materials to a recycling facility, not to a landfill or other site for disposal.

K. The General Manager/Engineer, and/or his or her designee, may restrict hours of collection of recyclable materials by authorized recyclers in designated areas in the SWA Region. Such restrictions shall be imposed only after promulgation of rules pursuant to section 1.01.390 of this Code which specify the criteria and process for imposing such restrictions.

L. Authorized recyclers, upon request, shall provide the General Manager/Engineer, and/or his or her designee, with a copy of a service agreement or other document (e.g., receipt from a Recycling Facility) demonstrating that the business and non-residential property, owner's or generator's, recyclable materials are being taken to a recycling facility. The service agreement or other document shall be available for inspection by General Manager/Engineer,

and/or his or her designee, at the authorized recyclers' place of business during normal business hours.

M. SWA staff may audit all authorized recyclers' recycling records in the SWA region.

4.01.110 Appeal Upon Denial of Certificate of Operation or Self-Haul Certificate

A. Within thirty (30) days of written notification of award denial or within sixty (60) days of General Manager/Engineer's, and/or his or her designee's, failure to act on the Certificate, applicant has the right to meet with the General Manager/Engineer, and/or his or her designee, to review the items cited in the written notice and provide any additional evidence to support an award. Within fifteen (15) days of such meeting, the General Manager/Engineer, and/or his or her designee, will make a final, written determination of the application, based on the reviews of additional evidence, together with the original application. General Manager/Engineer, and/or his or her designee, will send a copy of all final, written determinations, including reasons for denial, if any, to both applicant and the Board.

B. Applicant may, within ten (10) days after receiving the General Manager/Engineer's, and/or his or her designee's, final denial, request a public hearing before the Board by submitting to the Clerk of the Board a written petition for an appeal hearing. If a public hearing is requested, the Clerk of the Board shall set the matter for hearing at the next regularly scheduled Board meeting or any later date as agreed upon by the applicant and Clerk of the Board. At such hearing, applicant may present evidence in writing and through testimony of its employees and others relevant to the application. During such hearing, the Board may demand from the applicant such additional information, as the Board may deem relevant and necessary. Standard rules of evidence are not in effect at such public hearing, and the applicant shall have the burden of proof to show facts demonstrating that the applicant does in fact meet the requirements of this code. Any hearing may be continued or adjourned to a stated time and place without the giving of further notice. The Board will provide applicant with a written explanation of its determination on the application within thirty (30) days of such hearing. The Board's decision is final.

4.01.120 Self-Hauling

A. A business or non-residential property, owner or generator, may haul or transport recyclable materials generated and collected at its business or non-residential property to a recycling facility (rather than hiring a franchised waste hauler or Authorized Recycler) only if an owner, generator or employee of the entity completes this activity by utilizing a vehicle owned by either an employee or the entity.

B. A business or non-residential property, owner or generator, that hauls or transports recyclable materials generated and collected at its business or non-residential property to a recycling facility without the utilization of a franchised waste hauler or authorized recycler must complete and retain on-site a self-hauling form that certifies that all self-hauling activities will be completed in accordance with the provisions of Title IV or any other applicable law or regulation. The self-hauling form shall be made available to the General Manager/Engineer, and/or his or her designee upon request. At a minimum, the business and non-residential property, owner or generator, shall provide the following information on the self-hauling form:

- (1) The name, address and telephone number of the business and non-residential property representative that is signing the self-hauling form;
- (2) A list of the types of recyclable materials that are being transported;
- (3) For each type of recyclable material, the amount that is being taken from the business and non-residential property to a recycling facility quarterly;
- (4) The name and address of the recycling facility.

C. The self-hauling form shall contain a written statement, signed by the business or non-residential property, owner or generator, certifying that the owner or generator is in compliance with the requirements of Title IV.

D. The General Manager/Engineer, and/or his or her designee, may restrict or prohibit self-hauling by a person if the General Manager/Engineer, and/or his or her designee, determines, after providing notice and an opportunity for a hearing, that the person's self-hauling activities violate the provisions of Title IV or any other applicable law or regulation.

4.01.130 Reporting

A. Franchised waste haulers and authorized recyclers shall provide quarterly reports to the SWA identifying, at a minimum, the following:

- (1) The total number of customers they have in the SWA region;
- (2) The total number of customers they have in the SWA region who source separate recyclable materials;
- (3) The estimated percentage of customers they have in the SWA region who source separate recyclable materials;
- (4) The recyclable materials tonnage collected and removed within the SWA region during the previous quarter; and
- (5) The location of the recycling facility (ies) to which the recyclable materials were taken during the previous quarter.

Due dates for reporting periods:

<u>Reporting Period</u>	<u>Due Date</u>
January 1 – March 31	May 1
April 1 – June 30	August 1
July 1 – September 30	November 1
October 1 – December 31	February 1

B. If the quarterly report is not filed by the due dates above, the report shall be deemed delinquent, and the franchised waste hauler or authorized recycler shall pay to the SWA a delinquent report charge in the amount of fifty dollars (\$50.00). If the report remains delinquent for more than fifteen (15) days, the grantee shall pay to the SWA a delinquent report charge in the amount of one hundred dollars (\$100.00).

C. Franchised waste haulers' or an authorized recyclers' failure to file the reports required by this chapter shall constitute cause for termination or suspension of its franchise pursuant to Title I chapter 1.01.140 or termination or suspension of its authorization status pursuant to 4.01.100 (A)(8).

D. Self-haulers shall prepare quarterly reports to be kept on site identifying, at a minimum, the following:

(1) The recyclable materials tonnage collected and removed within the SWA region during the previous quarter.

(2) The location of the recycling facility (ies) to which the recyclable materials were taken during the previous quarter.

E. The General Manager/Engineer, and/or his or her designee, shall provide and establish guidelines, forms and other appropriate material to assist franchised waste haulers, authorized recyclers and self-haulers in preparing the reports required by this chapter.

4.01.140 Exemptions from Recycling Standards

A. Notwithstanding any other provision herein, a business or non-residential property, owner or generator, shall be exempt from the requirements in Chapter 4.01.040 of Title IV if the owner or generator generates less than four (4) cubic yards of solid waste per week.

B. Notwithstanding any other provision herein, a business or non-residential property, owner or generator, shall not be required to source separate recyclable materials if the business or non-residential property, owner or generator, demonstrates to the General Manager/Engineer, and/or his or her designee, that there is no collection service or other system available for recycling such material.

C. Notwithstanding any other provision herein, a business or non-residential property, owner or generator, shall be exempt from the requirements in Chapter 4.01.040 of Title IV if: 1) all of the generators on the owner's business or non-residential property are exempt from or not required to comply with the provisions of Chapter 4.01.040; or 2) recyclable materials are not being generated by any activities occurring on the owner's business or non-residential property.

D. Customers with existing businesses or non-residential properties, owners or generators, may be exempted by the General Manager/Engineer, and/or his or her designee, if it is determined, through a site visit requested by the business or non-residential property, owners or generators: 1) that there is not adequate storage space for automatic lift containers, bins or roll off bins for recyclable materials on site and that it is infeasible for the business or non-residential property, owners or generators, to share automatic lift containers, bins or roll off bins for recyclable materials with another business or non-residential property, owner or generator on an adjoining property; 2) or that compliance with Title IV results in a violation of zoning code requirements or municipal zoning regulations for minimum parking spaces. If the General Manager/Engineer, and/or his or her designee, determines that it is feasible for recycling containers to be placed on site or shared with an adjoining business or non-residential property, Owner, or Generator, then that business or non-residential property, owner or generator, will be responsible for compliance with Title IV.

E. An application for an exemption shall be submitted to the General Manager/Engineer, and/or his or her designee, on a form prescribed by the General Manager/Engineer, and/or his or her designee. After reviewing the request, the General Manager/Engineer, and/or his or her designee, shall either approve or disapprove the exemption request.

F. The following persons shall automatically be exempt from the requirements in Chapter 4.01.040 of Title IV:

1. The United States, State of California, a City, the County, a special district or other local public agency, or any employee or member of the Armed Forces thereof, when collecting or transporting recyclable materials produced by operation of the public entity under a system of recyclable materials' collection and transportation operated and maintained by the public agency within the SWA region.

2. Municipal corporations and other governmental agencies using their own vehicles and employees engaged in the collection, transportation or disposal of recyclable materials within the SWA.

4.01.150 Solid Waste Authority Rules and Regulations

A. The General Manager/Engineer, and/or his or her designee is authorized to make and enforce administrative rules and regulations governing recycling at businesses and non-residential properties and all related activities including recycling and commercial solid waste generation, storage, recovery, accumulation, collection, removal, transportation and disposal; the manner in which commercial solid waste and recycling services are provided; types of commercial solid waste and recycling containers and vehicles used therefor; for the operation and maintenance of sanitary methods of commercial solid waste and recycling disposal; reporting requirements for franchised waste haulers, authorized recyclers and self-haulers; and for the effective administration of Title IV. All such rules and regulations shall be consistent with the provisions of the SWA Code and shall be effective on the thirtieth (30th) day following the filing of any such rules and regulations with the Clerk of the Board.

B. The SWA Board may and is hereby empowered to grant to a qualified applicant a non-exclusive franchise to engage in the business of collecting, transporting or disposing of commercial solid waste or recyclable materials kept, accumulated or generated in the SWA region.

C. The SWA Board may grant a franchise based on compliance with this code. Any grant of a franchise by the SWA Board may be subject to such terms conditions, rules, regulations, restrictions, and limitations, as the SWA Board deems necessary to protect the public health, safety, or welfare.

D. The SWA Board hereby empowers and grants to the General Manager/Engineer, and/or his or her designee, the authority to grant certificates of operation and authorize recyclers, to make administrative and non-substantive changes to certificates of operation forms, designate recycling materials, and make administrative rules and regulations governing business and non-residential property recycling.

E. The SWA Board hereby empowers and grants to the General Manager/Engineer, and/or his or her designee, the authority to administer, implement and enforce Title IV and administrative rules and regulations governing business and non-residential property recycling thereafter.

F. It shall be unlawful and constitute a violation of Title IV for any person to violate or otherwise fail to comply with any rule or regulation issued pursuant to this Code.

4.01.160 Rights Reserved to SWA.

In addition to all other rights reserved to the SWA under Title IV, the following shall apply:

A. There is hereby reserved to the SWA every right and power, and the exercise thereof, which is reserved or authorized by any provision of any lawful ordinance, title or resolution of the SWA, whether enacted before or after the effective date of Title IV.

B. Neither the granting of any franchise or authorization nor any provision of any franchise or authorization shall constitute a waiver of or a bar to the exercise of any governmental right or power of the SWA.

C. The grantee shall have no recourse whatsoever against the SWA, its officers, employees or agents or any of the SWA member entities, their officers, employees, or agents for any loss, cost, expense or damage arising out of any provision or requirement of Title IV or of any franchised waste hauler franchise or authorized recycler certificate of operation issued under Title IV or because of the enforcement of Title IV.

D. There is hereby expressly reserved to the SWA the power and authority to amend any chapter of Title IV so as to require additional or greater standards on the part of the grantee.

4.01.170 Administration and Costs

A. The administration of Title IV is the duty of the General Manager/Engineer, and/or his or her designee. The General Manager/Engineer, and/or his or her designee, is authorized and directed by the SWA Board to administer Title IV.

B. SWA Franchise fees will fund administrative, implementation and enforcement costs.

4.01.180 Unlawful Acts

A. It shall be unlawful to combine recyclable materials with other solid waste. Failure to source separate recyclable materials for recycling is a violation of this Ordinance.

B. It shall be unlawful for franchised waste haulers to collect solid waste that contains visible signs of recyclable materials.

C. It shall be unlawful for authorized recyclers to collect recyclable materials that contain visible signs of solid waste.

D. It shall be the responsibility of the business or non-residential property, owner or generator, whose solid waste was not removed because it contained recyclables, to properly separate recyclables from the uncollected solid waste for proper recycling. Allowing such unseparated solid waste to accumulate will be considered a violation of Title IV.

4.01.190 Implementation and Enforcement

The implementation and enforcement of Title IV is the duty of the General Manager/Engineer, and/or his or her designee, of the Department of Waste Management and Recycling. The General Manager/Engineer, and/or his or her designee, is authorized and directed by the SWA Board to implement and enforce Title IV.

TITLE V

Chapter 5.01 Enforcement

5.01.005 Posting of Notices

The General Manager/Engineer, and/or his or her designee, may post notices on automatic lift containers, bins and roll off bins that are used for solid waste collection within the SWA region if the owner of the automatic lift containers, bins and roll off bins is in violation of this Code, including, but not limited to, any regulation, franchise requirement, permit, information request, order, variance, or other requirement that the General Manager/Engineer, and/or his or her designee, is authorized to enforce or implement pursuant to this Code.

A notice shall remain on automatic lift containers, bins and roll off bins that are used for solid waste collection within the SWA region so long as the owner of the automatic lift containers, bins and roll off bins is in violation of this Code.

The notice shall be posted on the automatic lift container, bin, and/or roll off bin so as to be clearly visible to the general public and include all of the following:

- A. The date of the notice was placed on the container.
- B. The address or location of the property including the identification of any dwelling unit, room number, apartment number, business or non-residential property.
- C. The name and contact telephone number of the agency posting the notice on the property.
- D. The SWA Code Section that has been violated.
- E. A statement that it is unlawful for any person to engage in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the SWA region, or to engage in the business of soliciting accounts or invoicing customers for commercial solid waste service in the SWA regions unless a franchise has first been granted pursuant to the provisions of this code and such a franchise is in full force and effect.
- F. A statement that a person violating the posted notice is subject to criminal penalties pursuant to SWA Code Section 5.01.120 and administrative civil penalties in an amount of up to one thousand dollars (\$1,000) for each day of each violation.
- G. A statement that a person disturbing or destroying the posted notice is subject to administrative civil penalties in an amount of up to one thousand dollars (\$1,000) in addition to any other remedies provided by this Code.

5.01.010 Notice of Violation

The General Manager/Engineer, and/or his or her designee, may issue a Notice of Violation to any person found to be in violation of a provision of this Code, including, but not limited to, any regulation, franchise requirement, permit, information request, order, variance, or other requirement that the General Manager/Engineer, and/or his or her designee, is authorized to enforce or implement pursuant to this Code. Issuance of a Notice of Violation may also result in issuance of a Notice of Administrative Enforcement Order pursuant to Section 5.01.030 of this Code.

5.01.020 Notice of Violation—Content

A. In addition to any other content, a Notice of Violation shall contain the following elements:

1. A statement of the General Manager/Engineer, and/or his or her designee's, findings that indicates a violation has occurred.
2. A citation of the provision of this Code including any regulation, franchise requirement, permit, information request, order, variance, or other requirement that has been violated.
3. A date by which any person must be in compliance with this Code including any regulation, franchise requirement, permit, information request, order, variance, or other requirement, or a date by which an action plan must be submitted by the person to propose a means and time frame by which to correct violations. The General Manager/Engineer, and/or his or her designee, may extend the compliance date when good cause exists for such an extension.
4. Notification that continued non-compliance may result in additional enforcement action being taken against the business, facility, or any responsible persons.
5. Notification that the SWA may recover any costs incurred by the SWA as a result of the violation.
6. Notification that a violation of this Code may result in an administrative civil penalty in accordance with section 5.01.110, or in criminal penalties.
7. Notification that the correction of any alleged violation(s) within the specified deadline date(s) will not necessarily prevent the General Manager/Engineer, and/or his or her designee, from issuing an Administrative Enforcement Order and imposing administrative civil penalties relating to the alleged violation(s).

B. In addition to any other content, a Notice of Violation may establish required corrective actions, including the following:

1. Terms, conditions, and requirements reasonably related to the provisions of this Code, including the following:
 - a. Cessation of prohibited actions.
 - b. Correction of prohibited conditions.
 - c. A requirement for submittal of a written action plan for achieving and maintaining compliance with this Code.
 - d. Reporting requirements to demonstrate ongoing compliance.
2. A requirement that the person receiving same shall submit written certification to the General Manager/Engineer, and/or his or her designee, that the necessary corrective actions have been completed. As appropriate for the type of correction action taken, the Notice of Violation may require documentation that substantiates the certification, including but not limited to receipts, contracts, or photographs.
3. Any other terms or conditions reasonably calculated to prevent additional or on-going violations of this Code.

C. An Administrative Enforcement Order may be issued separately, but only after issuance of a Notice of Violation, or in combination with a Notice and Order, for the same violations or set of related violations.

5.01.030 Administrative Enforcement Order

A. If the General Manager/Engineer, and/or his or her designee, determines that a person has committed, or is committing, a violation of any provision, franchise requirement, permit, information request, order, variance, or other requirement of this Code that the General Manager/Engineer, and/or his or her designee, is authorized to enforce or implement, the General Manager/Engineer, and/or his or her designee, may issue an Administrative Enforcement Order, after issuing a Notice of Violation or in combination with a Notice of Violation, requiring that the violation be corrected and imposing an administrative penalty.

B. Pursuant to section 5.01.110 of this chapter, the violator shall be liable for a penalty of not more than one thousand dollars (\$1,000) for each day on which each violation occurs and/or continues.

5.01.040 Administrative Enforcement Order—Content

A. In addition to any other content, an Administrative Enforcement Order shall contain the following elements:

1. A statement of the General Manager/Engineer, and/or his or her designee's, findings that indicates a violation has occurred.
2. A citation of the provision of this Code including any regulation, franchise requirement, permit, information request, order, variance, or other requirement that has been violated.
3. A date by which any person must be in compliance with this Code, or a date by which an action plan must be submitted by the person to propose a means and time frame by which to correct violations. The General Manager/Engineer, and/or his or her designee, may extend the compliance date when good cause exists for such an extension.
4. Notification that continued non-compliance may result in additional enforcement action being taken against the business, facility, or any responsible persons.
5. Notification that the SWA may recover any costs incurred by the SWA as a result of the violation.
6. Notification as to whether an administrative civil penalty is imposed and the terms and conditions of payment if any.

In establishing the penalty amount, the General Manager/Engineer, and/or his or her designee, shall take into consideration:

- (1) The nature, circumstances, extent, and gravity of the violation;
 - (2) The violator's past and present efforts towards compliant behavior;
 - (3) The violator's ability to pay the penalty;
 - (4) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
7. Notification that the correction of any alleged violation(s) within the specified deadline date(s) will not necessarily prevent the General Manager/Engineer, and/or his or her designee, from issuing an Administrative Enforcement Order and imposing administrative civil penalties relating to the alleged violation(s).

8. Notification that the recipient has a right to a hearing on the matter as set forth in section 5.01.060 of this Code to appeal any findings or required corrective actions established by the General Manager/Engineer, and/or his or her designee, .

9. Notification of procedures for requesting a hearing established according to section 5.01.060 of this chapter.

B. In addition to any other content, an Administrative Enforcement Order may establish required corrective actions, including the following:

1. Terms, conditions, and requirements reasonably related to the provisions of this code, including the following:

- a. Cessation of prohibited actions.
- b. Correction of prohibited conditions.
- c. A requirement for submittal of a written action plan for achieving and maintaining compliance with this Code.
- d. Reporting requirements to demonstrate ongoing compliance.

2. A requirement that the person receiving same shall submit written certification to the General Manager/Engineer, and/or his or her designee, that the necessary corrective actions have been completed. As appropriate for the type of correction action taken, the Notice of Violation may require documentation that substantiates the certification, including but not limited to receipts, contracts, or photographs.

3. Any other terms or conditions reasonably calculated to prevent additional or on-going violations of this Code.

C. A Notice of Violation or an Administrative Enforcement Order may be issued separately or in combination with another notice or order for the same violations or set of related violations.

5.01.050 Delivery of Notice or Order

Any Notice of Violation, permit revocation, Administrative Enforcement Order or other enforcement action pursuant to the requirements of this Chapter shall be subject to the following requirements:

1. Delivery shall be deemed complete upon either personal delivery to the recipient or by certified mail.

2. Where the recipient of the notice or order is the owner of the premises, the address for notice or order shall be the address from the most recently issued equalized assessment roll for the premises.

3. Where the owner or occupant of any premises cannot be located after reasonable efforts of the General Manager/Engineer, and/or his or her designee, the notice or order shall be deemed delivered after posting on the premises for a period of ten (10) business days.

5.01.060 Administrative Appeals

A. Any person, owner or operator served with an Administrative Enforcement Order issued pursuant to this chapter who has been unable to resolve any violation with the General Manager/Engineer, and/or his or her designee, may within 15 days after service of the order, request a hearing pursuant to this section by filing with the General Manager/Engineer, and/or

his or her designee, a Notice of Defense, which form shall be provided with the Administrative Enforcement Order.

1. A filing fee, established and amended from time to time by the General Manager/Engineer, and/or his or her designee, based on actual expense to conduct the hearing by the Hearing Officer, will be required of all filings of a Notice of Defense.

2. A Notice of Defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked and accompanied by payment of the filing fee. If the person filing a request for hearing prevails on appeal, then the filing fee will be refunded by the General Manager/Engineer, and/or his or her designee.

3. If no Notice of Defense is filed within the time limits provided by this subdivision, the Administrative Enforcement Order shall become final.

B. A person, owner or operator requesting a hearing on an order issued by the General Manager/Engineer, and/or his or her designee, under this chapter may select the Hearing Officer specified in either subparagraph 1 or 2 in this section by indicating so on the Notice of Defense filed with the General Manager/Engineer, and/or his or her designee. If a Notice of Defense is filed but no Hearing Officer is selected, the General Manager/Engineer, and/or his or her designee, may select the Hearing Officer pursuant to either subparagraph 1 or 2 of this section. Within 60 days of receipt of the notice of defense by the General Manager/Engineer, and/or his or her designee, the hearing shall be scheduled using one of the following:

1. An administrative law judge of the Office of Administrative Hearings of the Department of General Services, shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the General Manager/Engineer, and/or his or her designee, shall have all the authority granted to the agency by those provisions.

2. A Sacramento County Hearing Officer appointed pursuant to Government Code section 27720 et seq. Each Hearing Officer shall also meet the requirements of Government Code section 11425.30 and any applicable restriction.

C. When a hearing is conducted by a Hearing Officer designated by the General Manager/Engineer, and/or his or her designee, the Hearing Officer shall issue a decision within 30 days after the hearing is conducted. Each Hearing Officer designated by the General Manager/Engineer, and/or his or her designee, shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

Alternative dates for the hearing may be established by mutual consent of the person, owner or operator, and the General Manager/Engineer, and/or his or her designee, or as ordered by the Hearing Officer.

D. The hearing decision issued pursuant to subparagraph C. of this section shall be effective and final upon issuance by the General Manager/Engineer, and/or his or her designee. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

E. The hearing decision issued pursuant to subparagraph C. of this section may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the General Manager/Engineer, and/or his or her designee, if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

F. All administrative penalties and filing fees collected from actions brought by the General Manager/Engineer, and/or his or her designee, pursuant to this section paid to the General Manager/Engineer, and/or his or her designee, shall be deposited into a special account that shall be expended to fund the activities of the SWA in enforcing this chapter.

5.01.070 Conduct of Administrative Hearings—Generally

A. **General.** At the time set for hearing, the Hearing Officer shall state what the prima facie case is, what the burden of proof is, and what the range of penalties is. The Hearing Officer shall proceed to hear the testimony of the General Manager/Engineer, and/or his or her designee, the person, and other competent persons respecting the circumstances of the violation, and other relevant facts concerning the matter. The Hearing Officer shall follow the rules of procedure for conducting hearings established by this Code.

B. **Record of Oral Evidence at Hearing.** A record of the entire hearing proceedings shall be made by either a certified court reporter or any other means of permanent recording determined to be appropriate by the Hearing Officer. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees may be established and revised from time-to-time by the General Manager/Engineer, and/or his or her designee.

C. **Continuances.** The Hearing Officer may, upon request of the person, a party in interest, or the General Manager/Engineer, and/or his or her designee, grant continuances from time to time for good cause shown, or upon his/her own motion. Any continuance granted shall in no way diminish the responsibility of the person and/or parties in interest for maintaining the premises, nor affect other requirements of this Chapter regarding time for challenging any decisions made or actions taken.

D. **Oaths—Certification.** The Hearing Officer or certified court reporter shall administer the oath or affirmation.

E. **Evidence Rules.** Government Code of the State of California, Section 11513, as presently written, or hereinafter amended, shall apply to hearings conducted under this Chapter.

F. **Rights of Parties.** Each party may represent themselves, or be represented by anyone of their choice. Each party may appear at the hearing and offer evidence in this matter and cross examine witnesses.

G. **Official Notice.** In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state.

H. **Burden of Proof.** The burden of proof in hearings held pursuant to this chapter shall be as follows:

1. In the case of any notice or order, the General Manager/Engineer, and/or his or her designee, shall bear the burden of proof, by a preponderance of evidence, to show that a violation of this Code has occurred.

2. In the case of a notice of administrative civil penalty, the General Manager/Engineer, and/or his or her designee, shall bear the burden of proof, by a preponderance of evidence, to show that a penalty should be assessed.

3. In the case of an appeal regarding the occurrence of a violation, or of required corrective actions, the appellant shall bear the burden of proof, by clear and convincing evidence, to show cause for amending or rejecting all or part of the corrective actions or

requirements imposed by the General Manager/Engineer, and/or his or her designee, by a Notice or Order.

5.01.080 Form and Contents of Decision—Finality of Decision

A. Following the hearing, the Hearing Officer shall issue an order in writing no later than thirty (30) days from the date of the hearing, unless the time is waived by the parties. The order shall contain findings of fact and rationale appropriate to the violation and result, and a resolution of the essential issues raised, including the following:

1. Confirmation or denial of the occurrence of violations of this Code that are alleged by the General Manager/Engineer, and/or his or her designee;

2. Confirmation or rejection of any administrative civil penalty sought by the General Manager/Engineer, and/or his or her designee, and establishment of the monetary amount of any administrative civil penalty to be enforced; and

3. Confirmation, amendment, or rejection of required corrective actions related to compliance with this Code that are imposed by the General Manager/Engineer, and/or his or her designee, but only if those requirements are appealed by the person.

B. The Hearing Officer's order shall uphold required corrective actions if the person fails to show clear and convincing evidence that the required corrective actions are unreasonable or unnecessary for achieving or demonstrating ongoing compliance with this Code. The Hearing Officer's order may amend, or reject required corrective actions, provided that compliance with this Code will be achieved.

C. The Hearing Officer's order shall inform the person that failure to comply with the Hearing Officer's order shall constitute a misdemeanor and is subject to additional enforcement action, including criminal penalties and additional civil and administrative penalties.

D. The Hearing Officer's order shall inform the person that the time and manner by which a person may file a challenge to the Hearing Officer's order is governed by Government Code Section 53069.4, or any successor provision thereto.

E. The order issued by the Hearing Officer pursuant to this chapter shall be effective upon issuance. A copy of the order shall be delivered by the Hearing Officer in accordance with section 5.01.050 of this chapter.

F. Preparation of a record of the administrative proceeding shall be governed by the provisions of Code of Civil Procedure Section 1096.4

G. Any challenge to the order of the Hearing Officer concerning any appeal or administrative civil penalty shall be governed by Government Code Section 53069.4, or any successor provision thereto. Service of the notice of appeal authorized by Government Code Section 53069.4 on the SWA shall be served upon the Clerk of the SWA.

H. After any notice or order made pursuant to this chapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey such order. The General Manager/Engineer, and/or his or her designee, may pursue, through County Counsel or the District Attorney, appropriate judicial action against any person who fails to comply with any such notice or order, including charging that person with a misdemeanor offense

5.01.090 Procedures for Collection of Administrative Civil Penalty

A. The administrative penalty shall be due and payable within thirty (30) days after the Hearing Officer's decision is issued. If the penalty is not timely paid, the General Manager/Engineer, and/or his or her designee, may pursue all reasonable and legal means in collecting those sums authorized and due.

B. All administrative civil penalties collected from actions brought pursuant to this chapter shall be paid to the General Manager/Engineer, and/or his or her designee, enforcing this Code, and shall be deposited into a special account that shall be expended to fund the activities of the department to implement the applicable provisions of this Code.

5.01.100 Actions Not Prohibited

This chapter does not do any of the following:

A. Otherwise affect the authority of the General Manager/Engineer, and/or his or her designee, to take any other action authorized by any other provision of law.

B. Restrict the power of a city attorney, district attorney, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

C. Prevent the General Manager/Engineer, and/or his or her designee, from cooperating with, or participating in, proceeding specified in subsection 5.01.100(B).

5.01.110 Administrative Civil Penalties

In addition to any other remedies provided by this Code, any person who violates any provision of this Code, shall be liable for an administrative civil penalty to be imposed by the General Manager/Engineer, and/or his or her designee. The amount of the penalty shall not be more than one thousand dollars (\$1,000) for each day of each violation.

5.01.120 Criminal Penalties

A. The following criminal penalties apply to violations of this Code.

1. Violation as Misdemeanor. Unless otherwise specified by this Code, violations of the provisions of this Code or failure to comply with any of its requirements, including violations of terms and conditions established in connection with franchisees issued pursuant to this Code, shall constitute a misdemeanor.

2. The Sacramento County Sheriff's Department and/or any other law enforcement agencies located within the SWA region may issue a Notice to Appear Citation for any misdemeanor pursuant to Penal Code Section §53.6 for any violation of this Code.

3. Penalty for Misdemeanor. Unless otherwise specified in this Code, any person found to be in violation of any provision of this Code or fails to comply with any of its requirements shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense. Such penalties shall be in addition to any late fees, civil penalties, or other charges payable to the SWA by any person, including a Franchisee, for the same period of time or for the same violations



February 13, 2008

ADMINISTRATIVE RULES NO. 2008-01

Board of Directors

Lauren Hammond
Chair
(City of Sacramento)

Don Nottoli
Vice-Chair
(County of Sacramento)

Roger Dickinson
(County of Sacramento)

Jayna Karpinski-Costa
(City of Citrus Heights)

Kevin McCarty
(City of Sacramento)

Roberta MacGlashan
(County of Sacramento)

Susan Peters
(County of Sacramento)

Sandy Sheedy
(City of Sacramento)

Jimmie Yee
(County of Sacramento)

Paul Hahn
Administrator

Paul Philleo
Acting General Manager/Engineer

The following Administrative Rule is promulgated by the SWA General Manager/Engineer for implementation and enforcement of the SWA Business Recycling Ordinance, adopted by the SWA Board as Ordinance No. 17.

Administrative Rule Establishing Criteria and Process for Designating Prohibited Zones for Commercial Garbage and/or Recycling Collection Prior to 6 AM

- Whenever a noise complaint is received by SWA staff, the specific franchised hauler and/or authorized recycler (if identified by the resident) or all franchised haulers and/or authorized recyclers will be contacted by e-mail with a description of the complaint in order to seek voluntary compliance. The franchised haulers and/or authorized recyclers will be required to respond to the e-mail within 24 hours indicating if they have accounts in the area.
- If the franchised hauler and/or authorized recycler indicate having an account or accounts in the concerned area, the franchised hauler and/or authorized recycler will be asked by SWA staff to voluntarily re-route said accounts in order to provide the customer's garbage and/or recycling service no earlier than 6 AM.
- If SWA staff receives six (6) complaints from a minimum of three (3) different residents of early morning garbage and/or recycling service noise occurring prior to 6 AM within a consecutive six (6) month period within the same service area and if SWA staff has been unable to achieve voluntary compliance with the hauler(s) and/or authorized recycler(s) the SWA General Manager/Engineer or his/her designee shall designate the particular service area for service no earlier than 6 AM pursuant to SWA Title IV, Section 4.01.080, H and/or SWA Title IV, Section 4.01.100 K.

9850 GOETHE ROAD SACRAMENTO, CA 95827-3561

Phone: (916) 875-6789 Fax: (916) 875-6767

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- The SWA General Manager/Engineer or his/her designee shall notify all franchised haulers/authorized recyclers of the designated area for collection within five (5) working days of his/her decision. A map of the designated area shall also be sent to each franchised hauler/authorized recycler.

Pursuant to SWA Code Section 1.01.390, Administrative Rule 2008-01 will become effective March 20, 2008, 30 days after being received and filed by the Sacramento Regional Solid Waste Authority Clerk of the Board.

Administrative Rules No. 2008-01 was received and filed by the Sacramento Regional Solid Waste Authority Clerk of the Board on February 19, 2008.

By:

Paul Philleo

DATE: 2/14/08

Paul Philleo
Sacramento Regional Solid Waste Authority
Acting General Manager/Engineer

Policy Considerations::

Environmental Considerations:

Rationale for Recommendation:

Financial Considerations:

Emerging Small Business Development (ESBD):

Respectfully Submitted by: 
Edison Hicks
Integrated Waste Planning Superintendent

Recommendation Approved:

RAY KERRIDGE
City Manager

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