

ORDINANCE NO. 23-2003

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE SETTING, CHARGING, COLLECTING AND
ENFORCEMENT OF COMMERCIAL REFUSE HAULER FEES**

The City Council of the City of Elk Grove, California, finds and ordains as follows:

Section 1. Statements of Law and Facts; Findings

A. The City is authorized under Section 40059 of the California Public Resources Code to provide for solid waste handling services, by private haulers who are solid waste enterprises (which are comprised of any individual, partnership, joint venture, unincorporated private organization or private corporation, which is regularly engaged in the business of providing solid waste handling services). Solid waste handling services are comprised of collection, transportation, storage, transfer or processing of solid wastes, and further include, without limitation, recycling, composting and disposal of solid waste.

B. The City has provided for integrated solid waste handling services by private haulers. Prior to incorporation of the City effective July 1, 2000 the City's residents received solid waste handling services from the County of Sacramento (the "County") through the County's subcontractor, USA Waste of California, Inc. dba Central Valley Waste Services. The City has authorized the competitive procurement of a residential contract or franchise to commence July 1, 2004.

Prior to incorporation of the City, the City's commercial businesses received solid waste handling services from private haulers who held County refuse collection permits as required under Section 6.20.105 of the County Code. The City is not a member of the Sacramento Waste Authority ("SWA") and SWA's Ordinance No. 8 is not in effect within the City. Private haulers that collect, transport and dispose of commercial solid waste in the City are not subject to SWA jurisdiction or party to SWA franchises with respect to solid waste handling services provided in the City.

C. Private haulers who collect commercial solid waste do not pay franchise fees to the SWA for commercial solid waste collected in the City. Pursuant to the SWA's commercial franchise ordinance and its implementing franchise fee resolution, commercial haulers pay monthly franchise fees in an amount equal to 8% of their gross collection revenue to the SWA. Commercial haulers do not pay the SWA franchise fee based on their gross collection revenue in the City. To the best of the City's knowledge, commercial haulers may or may not include franchise fees in the service fees or rates that they charge their customers within the City.

D. The City must incur considerable costs of developing and implementing its solid waste management plans, as required by law. The California Integrated Waste Management Act ("AB 939") requires that the City develop and implement source

reduction, household hazardous waste, and nondisposal facility elements of a solid waste management plan, referred to in this Ordinance as the "AB 939 Plan". The City has submitted a compliance schedule to the California Integrated Waste Management Board ("CIWMB") and is preparing its AB 939 Plan, including the following elements:

(1) Source Reduction and Recycling Element ("SRRE"). The SRRE must contain descriptions of the City's waste characterization (volume generated and disposed; type; source of generation), source reduction program (such as waste audits of businesses; backyard composting education and bin distribution; awards programs; variable can rates; recycled procurement policy; consumer education (buy recycled, reduce/reuse/recycle), recycling program (such as residential curbside collection, Christmas tree recycling, commercial service programs / hauler diversion requirements, multi-family service programs; drop off centers; mixed waste processing, Recycling Market Development Zones, 20/20 CA Redemption centers; promoting inerts recovery; bulky waste collection / litter clean up days), composting program (such as residential curbside yard waste collection; securing processing services / markets), special waste handling program (asbestos, sewage sludge / biosolids, industrial sludge, ash, auto shredder waste, auto bodies, e-waste disposal at permitted facilities; dedicated land disposal for pre-treated sludges, private salvage operations for auto shredder waste and bodies, generator ash and asbestos disposal), 15-year disposal capacity (adjunct to haulers' collection services or by City contract), and education and public information program (such as brochures / bill stuffers, garbage truck signs, fact sheets; advertisements on kiosks, billboards, newspaper ads, cable; classroom presentations and outreach / assemblies, poster contests; web site, phone information hot line; exhibits at public events / Earth Day, County fair, Chamber of Commerce shows etc.; backyard composting workshops). Many of these programs may be in the SRRE that the City is developing and the CIWMB must approve.

The SRRE must demonstrate how the City will divert 50% of its waste from disposal.

The SRRE also must identify funding sources, such as: residential refuse collection charges, commercial refuse collection charges, franchise fees, residential curbside recycling revenues, licenses / permits and state aid. The Commercial Refuse Hauler Fees authorized by this Ordinance are one such source.

(2) Household Hazardous Waste Element ("HHWE"). The HHWE must describe the City's household hazardous waste services. Presently, the City has entered into an agreement with the City of Sacramento providing for household hazardous waste drop off, recycling and disposal services for City residents.

(3) Nondisposal Facility Element ("NDFE"). The NDFE must identify waste management facilities to handle the City's waste streams.

E. The City must incur considerable costs of reporting its solid waste generation and diversion, as required by law. The California Integrated Waste Management Act further requires that the City submit to the CIWMB an Annual AB 939 report (annual diversion rate, progress in implementing SRRE) and an Annual HHW report to CIWMB (Form 303, household hazardous waste collection).

F. The City incurs considerable costs of providing solid waste handling services. The City incurs costs of providing residential and commercial refuse, recyclables and yard waste collection, processing, transportation and disposal services, including, without limitation:

(1) administration and enforcement of solid waste collection contract, ordinances and the City Code,

(2) implementation of solid waste programs required by law (including the City's SRRE, HHWE and NDFE),

(3) mitigation of infrastructure impacts related to collection of solid waste and solid waste program implementation,

(4) protecting and promoting the public health and welfare with respect to solid waste, including without limitation, putrescible wastes that may attract vectors, vermin and otherwise comprise a nuisance, and

(5) ancillary and related costs incurred by the City in accordance with law.

G. The City faces civil penalties of up to \$10,000 / day for failure to implement its solid waste management plans, , including achieving 50% diversion as provided in Section 41850 of the Public Resources Code.

H. The City is authorized to establish fees for providing solid waste handling services and to fund the costs of its AB 939 Plan. The City is authorized under Section 40059 of the Public Resources Code to determine charges and fees for providing solid waste handling services ("Solid Waste Services Fees"). The City is further authorized under Section 41901 of the Public Resources Code to impose fees in amounts sufficient to pay the costs of preparing, adopting and implementing its SRRE, HHWE and NDFE, based on the types or amounts of solid waste and used to pay the actual costs incurred by the City that are directly related to preparing, adopting and implementing those elements as well as insetting and collecting the local fees ("AB 939 Fees"). Solid Waste Services Fees and AB 939 Fees are referred to together in this Ordinance as "Commercial Refuse Hauler Fees".

I. The City wishes to encourage recycling and waste diversion by enterprises that recycle Source Separated Materials described in Section 2B2(B) of this Ordinance by excepting gross receipts from payment of AB 939 fees. The City wishes to minimize the cost of recycling and encourage diversion of recyclable materials from disposal, and

therefore has chosen not to require those recycling enterprises to obtain permits or pay fees like Commercial Refuse Hauler Fees. Example recycled materials would be source separated cardboard, glass or metal and inerts.

In order to avoid placing permitted refuse haulers that also provide similar recycling services at an economic disadvantage as compared to recycling enterprises that do not collect refuse and do not obtain solid waste refuse permits or pay fees, by adopting this ordinance and accompanying resolution, the City intends to exempt those refuse haulers from paying Commercial Refuse Hauler Fees on gross receipts derived from providing services related to recyclable materials if providing those services does not require refuse permits.

J. The anticipated amount of Commercial Refuse Hauler Fees does not exceed the estimated costs. The anticipated amount of the Solid Waste Services Fee does not exceed the estimated costs of providing for solid waste handling services (including City administration and enforcement of its solid waste code). The anticipated amount of the AB 939 Fees does not exceed the estimated costs of developing and implementing the City's SRRE, HHWE and NDFE, as required by Section 66016(a) of the Government Code.

K. The Commercial Refuse Hauler Fees are necessary to provide funding to comply with AB 939 in furtherance of public health. Solid waste management is a matter of City public health and welfare, and the Solid Waste Fees are necessary to provide funding to protect that interest and comply with AB 939.

Section 2. Establishment of Commercial Refuse Hauler Fees

A. Commercial Hauler. The following persons are referred to in this Ordinance as Commercial Haulers:

(1) Each person that is obligated under Section 6.20.105 of the Sacramento County Code to secure a General Refuse Collection Permit described in Section 6.20.200 of that Code, or who after the date of this Ordinance must secure a license or permit issued by the City, and

(2) Each person who collects solid waste (as defined in AB 939) from either:

(i) Premises other than single family, duplex and triplex premises within the City, or

(ii) Fourplex and larger multi-family premises in the City, which do not choose to subscribe to services with carts from the City's residential solid waste contractor, but rather with bins or roll-off boxes from the permittee, and

(3) each person who supplies goods (including, without limitation, containers and vehicles) or services (including, without limitation, account solicitation, billing,

invoicing, subcontracting, brokering, disposal or any solid waste handling services) to persons described under preceding items (1) and (2), whether pursuant to arrangements that are formal or informal, written or otherwise.

B. Obligation.

(1) Amount. Commercial Haulers must pay to the City the Commercial Refuse Hauler Fees on Gross Receipts in the amount prescribed from time to time by resolution of the City Council and in accordance with the terms of this Ordinance.

(2) Definitions.

(A) "Gross Receipts"

(i) "Gross Receipts" includes all, total, aggregate, whole or entire revenue and income received by the Commercial Hauler for services rendered within the City of Elk Grove without offsets or deductions such as costs, expenses, charges, losses, fees (i *except* for the Commercial Refuse Hauler Fee), fines or penalties, and without regard to the identity of the customer to which that revenue or income is attributable, whether federal, state or local governmental entities, including, without limitation, school districts.

(ii) "Gross Receipts" excludes all that revenue and income for services comprised of the collection of Source Separated Materials if the collection of those Source Separated Materials does not require that Commercial Hauler secure a General Refuse Collection Permit described in Section 6.20.200 of the County Code, or who after the date of this Ordinance must secure a license or permit issued by the City.

(B) "Source Separated Materials" means materials separated at the point of generation from mixed solid waste, refuse or rubbish which contain less than:

(i) Ten percent (10%) of total weight in contaminating solid waste that is not recyclable commodities (including by example, papers, glass, metals and wood), and

(ii) Thirty percent (30%) of total weight in contaminating solid waste that is not inerts,

(iii) And in both instances (i) and (ii) including no more than one percent (1%) of total weight in putrescible solid waste as part of the contaminating solid waste.

For purposes of this Ordinance, "inerts" means solid waste and recyclable materials that are source separated and do not contain hazardous waste (as defined in CCR, Title 22, Section 66261.3 *et seq.*), or soluble pollutants at concentrations in excess of applicable water quality objectives, none of which solid waste, recyclable materials or soluble

pollutants contain putrescible wastes, *including*, without limitation, concrete (that may have steel reinforcing bar embedded in the concrete), fully cured asphalt, glass, plastics, fiberglass, asphalt or fiberglass roofing shingles, brick, slag, ceramics, plaster, clay and clay and clay products and any other materials determined by the California Integrated Waste Management Board to constitute inerts; further *including* all materials determined by the State Water Resources Control Board to constitute inerts, such as treated industrial wastes, de-watered bentonite-based and drilling mud; but *excluding* gravel, rock, soil, sand and similar materials as they exist in their natural state, whether processed or not, that have never been used in connection with any structure, development, grading or other human purpose.

(3) Disputes. At direction of the City, Commercial Haulers claiming that specified Gross Receipts are excluded from calculation of Commercial Refuse Hauler Fees will:

(A) Sort source separated materials or characterize or analyze those source separated materials by weight in a manner satisfactory to City in order to establish to satisfaction of City that they are defined "Source Separated Materials" described in the definition thereof in Section 2B2(B) of this Ordinance, and

(B) Demonstrate to satisfaction of City that the collection of those Source Separated Materials does not require that Commercial Hauler secure a General Refuse Collection Permit, license or permit as described in the definition of "Gross Receipts" defined in Section 2B2(A) of this Ordinance.

Disputes over whether Gross Receipts are excluded from calculation of Commercial Refuse Hauler Fees will be resolved by the City's Director of Public Works or his or her respective designees. The Director's decision may be appealed to the City Manager, explaining the basis of the appeal, within 10 days of the Director's decision and the prepayment of the City's projected costs and expenses of conducting the appeal, including related staff time and fees of consultants to the City. The burden of proof will be on the Commercial Hauler challenging the Director's decision. The City Manager or his or her designee will hear the appeal and render a written decision, which will be final. The City will return any excess prepayments to the Commercial Hauler within 30 days of rendering the written decision or the Commercial Hauler will reimburse the City additional costs and expenses within 30 days of City's documented request therefore.

C. Time and Manner of Payment. Commercial Haulers must pay the Commercial Refuse Hauler Fees monthly, due and payable on or before the first day of the second month immediately following the month in which they received Gross Receipts from their customers, commencing on the day this Ordinance and its accompanying resolution take effect. For example, for Gross Receipts received in July, Commercial Haulers must remit the corresponding monthly Commercial Refuse Hauler Fee on or before September 1.

Commercial Haulers must pay the Commercial Refuse Hauler Fees to:

City Finance Department
City of Elk Grove
City Hall
8400 Laguna Palms Way
Elk Grove, CA 98758

The City may direct payment to such other address as it deems necessary without amendment to this Ordinance by written direction to the Commercial Hauler. Commercial Refuse Hauler Fees will be deemed paid (1) on the date of personal delivery during hours that the City Hall is open for business to the public, (2) or the date of postmark of mailed delivery with the United States Postal Service, or (3) other proof satisfactory to the City that Commercial Refuse Hauler Fees were deposited in mail or with other delivery service on or before the date their payment is due.

D. Payment Security. Commercial Haulers must provide City with a letter of credit or certificate of deposit in form satisfactory to the City, to secure payment of Commercial Refuse Hauler Fees to the City in an amount equal to the greater of (1) one half of the amount of Commercial Refuse Hauler Fees received by Commercial Hauler in the prior calendar year, or (2) the amount of those Commercial Refuse Hauler Fees received during the preceding 180 days.

E. Documentation and Warranty. Together with payment of Commercial Refuse Hauler Fees, the person submitting the payment and the chief financial officer of the Commercial Hauler or other person acceptable to the City Manager, must submit the following (1) documentation and (2) representation and warranty:

(1) Reports and documentation in form and detail satisfactory to the City Manager showing the basis for calculating the Commercial Refuse Hauler Fees, together with additional information that the City Manager may determine to be necessary to calculate or verify the Commercial Refuse Hauler Fees; and

(2) A representation and warranty as follows: "I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of [INSERT NAME OF COMMERCIAL HAULER] and am responsible for keeping and maintaining its financial records, including Gross Receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING COMMERCIAL REFUSE HAULER FEE PAYMENT ACCOUNTING STATEMENT]. To my best knowledge and belief, the statement is true, correct and complete."

Documentation and representations and warranties filed by Commercial Haulers will not be deemed conclusive as to the information presented or statements made therein. Commercial Haulers' submission of documentation and representations and warranties does not preclude the City from taking additional measures and actions to collect Commercial Refuse Hauler Fees actually due and payable.

F. Late Payment Charges. If a Commercial Hauler does not fully and timely pay its Commercial Refuse Hauler Fees in accordance with Section 2C of this Ordinance, the Commercial Hauler must pay a late payment charge in an amount equal to two percent (2%) of the amount of unpaid Commercial Refuse Hauler Fees plus interest equal to one and one-half percent (1½%) for each month in which the Commercial Refuse Hauler Fees are late, or the maximum amount permitted by law.

G. Credits for Overpayments. If a Commercial Hauler believes that it has paid Commercial Hauler Refuse Fees in excess of amounts owed the City, it may request a refund by application in form and manner satisfactory to the City. Upon submission of request and documentation both satisfactory to City, the City may refund the excess amount or credit it against future payments of Commercial Hauler Refuse Fees. Commercial Haulers may not credit or offset any claimed excess payments of Commercial Hauler Refuse Fees to future payments of Commercial Hauler Refuse Fees or other amounts due to the City without first obtaining the written consent of the City Manager.

Section 3. Records and City Audit

A. Records and Accounts. Commercial Haulers will maintain accurate and complete books and accounts of all Gross Receipts and records documenting and supporting those books accounts.

B. Audit. City may audit the books, accounts and records of Commercial Haulers and Commercial Haulers must provide City with copies thereof within two weeks of City's request therefore or access thereto at locations within the County of Sacramento. Records include, without limitation, financial and operating records with respect to Gross Receipts as well as customer subscriptions and accounts establishing location within the City. If the City's audit demonstrates to the satisfaction of City that the amount of Commercial Refuse Hauler Fees remitted by Contractor to City was in error, then within 30 days following City's submission of the results of the audit to Commercial Hauler Commercial Hauler will pay the City the following amount:

- (1) The understated Commercial Refuse Hauler Fees, plus
- (2) The late payment charges provided in Subsection 2F of this Ordinance, plus
- (3) The City's costs of conducting the audit, including fees paid to independent contractors and time spent by City employees.

Section 4. License fees or business taxes. Commercial Refuse Hauler Fees are in addition to any license fee, business tax or other charge prescribed by the City.

Section 5. Use of Commercial Refuse Hauler Fees. City may use the proceeds of the Commercial Refuse Hauler Fees for any costs and expenses of the City permitted under law with respect to developing and implementing its AB 939 Plan and providing

solid waste handling services (as defined in AB 939).

Section 6. Violations or Infractions. Failure to comply with this Ordinance constitutes a misdemeanor and additionally gives rise to a civil action for damages and penalties.

(A) Criminal Penalties. Commercial Hauler or any person, whether as principal, agent, employee, acting with apparent authority of Franchise, who fails to comply with this ordinance will be fined no more than \$1,000 or imprisoned for not more than 6 months in the County jail, or both. Each day of failure to comply, including late payment of underpayment of the Commercial Refuse Hauler Fee, is considered a separate offense.

(B) Civil Penalties. Nothing in this ordinance shall limit any civil remedies provided at law or in equity, including without limitation exemplary damages in an amount sufficient to deter future offending conduct and to make an example of the party failing to comply with this ordinance.

Section 7. Self-haul Exception to Mandatory Collection. A new subsection (h) shall be added to Section 6.20.110 EXEMPT COLLECTION OR TRANSPORTATION, of the City Code:

“(h) The owner, tenant, lessees or occupant of every improved parcel described in Section 6.20.120 who or which shall provide evidence satisfactory to City that the owner, tenant or occupant himself, herself or itself regularly transports at least once every week refuse generated at that parcel for disposal at a transfer or disposal facility permitted in accordance with law, which evidence includes, without limitation, invoices for disposal issued weekly by the transfer or disposal facility.”

The second sentence of Section 6.20.115 REFUSE REMOVAL shall correspondingly be amended to read as follows:

“It is unlawful for the owner, occupant, tenant or lessee of any of the above-described premises to fail or neglect to provide for the removal of refuse by a permittee or the County as required by this section or regulations issued hereunder *unless* they qualify for the self-haul exception to mandatory collection described in Section 6.20.110(h).”

Section 8. Severability. If any portion of this Ordinance is held by a court of competent jurisdiction to be unconstitutional, illegal or unenforceable, the remaining portions of this Ordinance not affected by that court's decision will remain valid.

Section 9. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

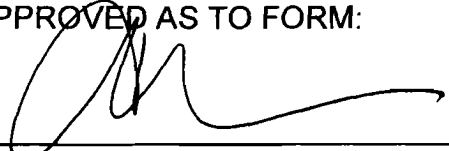
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 6th day of August 2003.


SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY

Effective Date: September 5, 2003

AYES: Scherman, Soares, Briggs, Cooper, Leary
NOES: None
ABSTAIN: None
ABSENT: None