

ORDINANCE NO. 2-2004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AUTHORIZING THE SETTING, CHARGING, COLLECTING AND ENFORCEMENT OF RESIDENTIAL 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. Solid waste handling services authorization. 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. Exclusive residential solid waste franchise. 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, entitled "RESIDENTIAL REFUSE COLLECTION AND TRANSPORTATION TO DISPOSAL FACILITIES, AND RECYCLABLES AND GREEN WASTE COLLECTION, TRANSPORTATION, PROCESSING AND MARKETING SERVICES" (together with similar future contracts or franchise, the "Franchise"). The City awarded the Franchise to a single waste services provider (the "Franchisee").

C. The Franchise is a special privilege granted by the City to the franchisee for its use and exercise, including private profit, in consideration of which the City may charge the Franchisee fees ("**Residential Hauler Franchise Fees**"). Pursuant to the franchise, the City also delegates solid waste management functions in furtherance of the public welfare and subject to the contractual obligations and duties in the Franchise agreement.

D. SRRE and HHWE plan development and implementation costs. 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:

- On May 13, 2003, the CIWMB extended the due date to January 31, 2004 for submittal of complete planning documents;
- On September 3, 2003 the City Council approved the Nondisposal Facility Element and shortly thereafter submitted it the CIWMB;
- On November 5, 2003, the City Council conducted a public hearing to receive any public comments on the Preliminary Draft SRRE and HHWE. No public comments were received at the public hearing but comments were received during the public review period from the City of Sacramento, County of Sacramento, Cities/County Solid Waste Advisory Committee, and the CIWMB.
- On December 17, 2003, the City Council conducted a public hearing to receive any public comments on the Final Draft SRRE and HHWE. No public comment was received. The Council also certified the negative declaration for the environmental review of both plans and approved both by resolution.
- The City expects to submit its complete, locally approved SRRE and HHWE by early January to the CIWMB.

(1) **Source Reduction and Recycling Element ("SRRE").** The SRRE must contain descriptions of the City's waste characterization (quantity 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, Residential 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, Residential Hauler Franchise Fees, residential curbside recycling revenues, licenses/permits and state aid. The Residential 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. SRRE and HHWE reporting costs. 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 HHWE report to CIWMB (Form 303, household hazardous waste collection).

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

(1) administration and enforcement of solid waste collection and disposal contracts, 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. Potential penalties. 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. Residential Hauler Franchise Fees. The City in this ordinance authorizes the City Council to establish Residential Hauler Franchise Fees from time to time by resolution, in accordance with the terms of the Franchise. The City Council finds and declares that

Residential Hauler Franchise Fees may be established in consideration for awarding Franchise to the Franchisee and to fund the costs, including without limitation of:

- administering and enforcing the Franchise,
- implementing solid waste programs required by law (including the City's Source Reduction and Recycling Element and its Household Hazardous Waste Element),
- mitigating infrastructure impacts related to performance of the Franchise and solid waste program implementation,
- 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 create a nuisance, and
- any other costs incurred by the City in accordance with law.

I. Residential Refuse Hauler Fees. The City is authorized to establish fees for providing solid waste handling services and to fund the costs of its AB 939 Plan, including Residential Hauler Franchise Fees.

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**").

Residential Hauler Franchise Fees, Solid Waste Services Fees and AB 939 Fees are referred to, together in this Ordinance as "**Residential Refuse Hauler Fees**".

J. Anticipated fee amounts. The anticipated amount of Residential 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. Necessity for fees. Residential Refuse Hauler Fees together with fees imposed on commercial haulers are necessary to provide funding to comply with AB 939 in furtherance of public health. Solid waste management is a matter of the City's 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 Residential Refuse Hauler Fees.

A. Residential Hauler. The following persons are referred to in this Ordinance as Residential Haulers: any person that provides residential solid waste handling services pursuant to the Franchise.

B. Obligation.

(1) Amount. Residential Haulers must pay to the City the Residential Refuse Hauler Fees on Gross Receipts or other basis of calculation 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". "Gross Receipts" includes all, total, aggregate, whole or entire revenue and income received by the Residential Hauler as compensation under the Franchise without offsets or deductions such as costs, expenses, charges, losses, fees (*including* for the Residential Refuse Hauler Fees), fines or penalties, *excluding* revenue, and income for sale of recyclables or green waste.

Disputes over the amount of Gross Receipts and calculation of Residential 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 Residential 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 Residential Hauler within 30 days of rendering the written decision or the Residential Hauler will reimburse the City additional costs and expenses within 30 days of City's documented request therefore.

C. Time and Manner of Payment. Residential Haulers must pay the Residential 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, Residential Haulers must remit the corresponding monthly Residential Refuse Hauler Fee on or before September 1.

Residential Haulers must pay the Residential Refuse Hauler Fees to:

City of Elk Grove Finance Department
8380 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 Residential Hauler. Residential 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 Residential Refuse Hauler Fees were deposited in mail or with other delivery service on or before the date their payment is due.

D. Payment Security. Within 30 days of City direction, Residential Haulers must provide City with a letter of credit or certificate of deposit in form satisfactory to the City, to secure payment of Residential Refuse Hauler Fees to the City in an amount equal to the greater of (1) one half of the amount of Residential Refuse Hauler Fees received by Residential Hauler in the prior calendar year, or (2) the amount of those Residential Refuse Hauler Fees received during the preceding 180 days.

E. Documentation and Warranty. Together with payment of Residential Refuse Hauler Fees, the person submitting the payment and the chief financial officer of the Residential 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 Residential Refuse Hauler Fees, together with additional information that the City Manager may determine to be necessary to calculate or verify the Residential 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 RESIDENTIAL 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 RESIDENTIAL REFUSE HAULER FEE PAYMENT ACCOUNTING STATEMENT]. To my best knowledge and belief after inquiry, the statement is true, correct and complete."

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

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

G. Credits for Overpayments. If a Residential Hauler believes that it has paid Residential 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 Residential Hauler Refuse Fees. Residential Haulers may not credit or offset any claimed excess payments of Residential Hauler Refuse Fees to future payments of Residential 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. Residential 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 Residential Haulers and Residential 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 Residential 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 Residential Hauler Residential Hauler will pay the City the following amount:

- (1) the understated Residential 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. Residential Refuse Hauler Fees are in addition to any license fee, business tax or other charge prescribed by the City.

Section 5. Use of Residential Refuse Hauler Fees. City may use the proceeds of the Residential 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.** Residential 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 Residential 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. 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 8. 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 on this 21st day of January 2004.


for 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: February 20, 2004

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