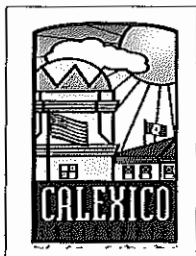


**AGENDA
ITEM
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AGENDA STAFF REPORT

DATE: July 21, 2021

TO: Mayor and City Council

APPROVED BY: Miguel Figueroa, City Manager *MV*

PREPARED BY: Lilliana Falomir, Public Works Manager – Administrative *Lilliana*

SUBJECT: Second Reading and Adoption of Ordinance No. 1216 - An Ordinance of the City of Calexico Repealing and Readopting City Code Chapter 8.39 in its Entirety Regarding Mandatory Recycling.

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Recommendation:

Conduct second reading and adopt Ordinance No. 1216 - An Ordinance of the City of Calexico Repealing and Readopting City Code Chapter 8.39 in its Entirety Regarding Mandatory Recycling.

Background:

AB 341 (Chapter 476, Statutes of 2011) requires the City to implement mandatory recycling for all businesses that generate four cubic yards or more of solid waste per week, and multi-family complexes of five or more units.

AB 1826 (Chapter 727, Statutes of 2014), requires businesses to and multi-family properties that generate two or more cubic yards of solid waste to subscribe to organics collection service. .

“Organic waste” for the purposes of AB 1826, means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

The goal of AB 341 and AB 1826) is to help California achieve aggressive recycling and greenhouse gas emission goals.

SB 1383 (Chapter 395, Statutes of 2016) directed the California Department of Resources Recycling and Recovery (CalRecycle) to adopt regulations to reduce organic waste by 50 percent from its 2014 baseline level by 2020 and 75 percent by 2025. CalRecycle promulgated those regulations

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("SB 1383 Regulations"). The SB 1383 regulations require the City to adopt an ordinance to enforce the SB 1383 Regulations by January 1, 2022. This Ordinance does not address the SB 1383 Regulations. Another ordinance will be brought forth to address the SB 1383 Regulations later this year.

Discussion & Analysis:

Imperial Valley Resources Management Agency (IVRMA), Republic Services and City staff have been promoting recycling and organics recycling and meeting with businesses. This Ordinance will update the Calexico Municipal Code to comply with AB 341 and AB 1826, and to increase the amount of recyclable materials diverted from landfills.

City Council unanimously approved the first reading by title only of the ordinance at their special meeting on June 23, 2021.

Fiscal Impact:

None at this time.

Coordinated With:

City Attorney
Public Works Department.

Attachment(s):

1. Ordinance No. 1216 - An Ordinance of the City of Calexico Repealing and Readopting City Code Chapter 8.39 in its Entirety Regarding Mandatory Recycling.

ORDINANCE NO. 1216

**AN ORDINANCE OF THE CITY OF CALEXICO REPEALING AND
READOPTING CITY CODE CHAPTER 8.39 IN ITS ENTIRETY
REGARDING MANDATORY RECYCLING**

WHEREAS, the purpose of this Ordinance is to update the provisions for solid waste collection within the City of Calexico ("City") based upon numerous changes in law and practice in the last 20 years and to establish incentives and requirements for the collection and recycling of recyclable materials and organic materials generated from commercial premises and multi-family dwellings within the City; and

WHEREAS, this Ordinance will assist the City in complying with the Integrated Waste Management Act of 1989 (AB 939, Statutes of 1989), the Solid Waste Disposal Measurement Act of 2008 (SB 1016, Statutes of 2008), the Mandatory Commercial Recycling Act of 2011 (AB 341, Statutes of 2011), and the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826, Statutes of 2014); and

WHEREAS, this Ordinance will also help reduce greenhouse gas emissions associated with the disposal of solid waste in landfills, protect the natural environment and human health, enhance the economy through increased recycling and organic materials processing activities; and

WHEREAS, the City Council of the City of Calexico has determined that adoption of this Ordinance will serve the health, safety and public welfare of the community.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Calexico as follows:

SECTION 1. Chapter 8.39 is repealed in its entirety and replaced in its entirety as follows:

ARTICLE I: COLLECTION AND DISPOSAL

Section 8.39.020 – Definitions

For the purpose of this chapter, the following words and phrases are defined and shall be construed as hereinafter set forth, unless it is apparent from the context that a different meaning was intended. If a term or word is not specifically defined herein but is defined in the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.) it shall have the meaning prescribed therein.

“Animal waste.” Manure, fertilizer, or any form of solid excrement produced by any and all forms of domestic animals or commercial livestock.

“Bin.” A rigid container with hinged lids and wheels with a capacity of at least one (1) cubic yard and less than ten (10) cubic yards.

“Business.” Means any Person or entity that possesses or is required to possess a business registration certificate, as stated in Title 5.

“CalRecycle.” The California Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

“Cart.” A wheeled Container of appropriate material with a hinged lid and wheels serviced by an automated or semi-automated Truck with a capacity no less than 30-gallons and no greater than 101-gallons.

“City.” The City of Calexico.

“City Clerk.” The City Clerk of the City of Calexico, and his or her authorized deputies.

“City Manager.” The City Manager of the City of Calexico or his or her designee.

“Collect” or “Collection.” Physical possession, transport, and removal of Solid Waste from the City.

“Collection charge.” A charge for the Collection of Solid Waste, Recyclable, and Organic Materials shall be imposed on the Owner or Occupant of each Residential Premise or Commercial Premises to which service is made available. The amount of such charge shall be fixed and changed from time to time and shall be Collected at such time and in such manner as prescribed by the City Council. The charge so fixed shall be a civil debt due and owing to the City or Solid Waste Collector from the Owner or Occupant of the Residential Premises or Commercial Premises to which the service is made available.

“Commercial Premises.” Premises upon which Business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary in this ordinance or City Code, Premises upon which the following uses (as defined in the City Code) are occurring shall be deemed to be Commercial Premises: Adult Residential Facilities, Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, and Motels.

“Commercial generator.” Any legal entity, except a Special Event, that generates Solid Waste at a Commercial or industrial facility, that may include businesses; charitable or nonprofit organizations, including hospitals, educational institutions, and civic or religious organizations; governmental organizations, agencies, or entities; and nonresidential tenants or entities that lease or occupy space. "Commercial generator" also includes the City and its facilities and nonresidential properties. The entity that is the Commercial generator is the Commercial Generator and account holder.

“Composting.” The controlled biological decomposition of Organic Waste that is Source Separated from the Solid Waste Stream.

“Composting center, station or facility.” A facility at which the principal function of which is to receive and to process Organic Waste through composting.

“Construction and Demolition Debris,” “C&D” and “Construction Waste.” Solid Waste directly related to construction or demolition activities.

“Container.” Any and all types of Receptacles, including Carts, Bins and Roll-off Boxes.

“Contamination.” (A) all materials other than those defined as Recyclable and/or Organic Materials that were placed in a Container designated for Recyclable Materials or were Collected by a Solid Waste Collector with Recyclable Materials; (B) all materials other than those defined as organic materials that were placed in a Container designated for Organic Materials or were Collected by Solid Waste Collector with Organic Materials; or (C) Recyclable Materials and Organic Materials placed in a Container designated for Refuse or were Collected by a Solid Waste Collector with Refuse.

“Council.” The City Council of the City of Calexico.

“Disposal.” Means the ultimate disposition of Solid Waste collected at a landfill or otherwise in full regulatory compliance. "Disposal" does not include Recycling or Organic Materials processing.

“Food waste.” All kitchen and table food scraps, animal or vegetable waste that is generated during or results from, the storage, preparation, cooking or handling of food stuffs; discarded compostable paper that is contaminated with food waste; fruit waste, grain waste, dairy waste, meat, and fish waste, which has been Source Separated from other Solid Waste. Food waste is a subset of Organic Materials and excludes Hazardous Materials.

“Franchisee.” Means a “franchisee” as defined in Section 8.36.010 of the City Code.

“Green waste.” Leaves, grass clippings, brush, branches, and other forms of organic materials generated from landscapes or gardens, which have been Source Separated from other solid waste. Green waste is a subset of Organic Materials and excludes Hazardous Materials.

“Hazardous Material.” Is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "hazardous material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Hazardous Substance Account) ; (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501) of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250. 1 of the California Health and Safety Code; (vii) asbestos; (viii) identification and listing

of hazardous waste under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as “hazardous waste” or “extremely hazardous waste” pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as “waste” or a “hazardous substance” pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq. or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, State or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

“Mixed Waste Processing.” The separation and sorting of Recyclables and other recoverable materials from Refuse at a material recovery facility where commingled loads of Solid Waste are processed.

“Multi-Family Dwelling.” A residential structure with five or more residences including apartment buildings, mobile home parks, trailer parks, and condominium buildings. Multi-Family Dwelling units generally receive Refuse Collection service through the use of shared Bins.

“Multi-Family Generator.” Tenants, residents, and other Occupants, Multi-Family Dwellings.

“Occupant.” Includes every Owner of, and every tenant or Person in possession of, is the inhabitant of, or has the care and control of, an inhabited residence.

“Organic Materials” or “Organic waste.” Food Wastes, Green Wastes, wood wastes, and yard wastes, and other organic material as defined by CalRecycle, collectively or individually.

“Organic materials collector.” Any Person or Persons, firm, partnership, joint venture, association or corporation engaged in the Collection or transportation of Organic Materials generated in the City.

“Organic materials processing facility.” A permitted facility where Organic Material is sorted, mulched, or separated for the purposes of Recycling, reuse or Composting in compliance with applicable law and regulations.

“Owner.” The Person holding legal title to the real property constituting the premises to which Solid Waste, targeted Recyclable Materials, and/or Organic Materials Collection service is provided.

“Permit.” Written authority granted by the City to any Solid Waste Collector as evidenced by contract, franchise, certificate or other writing issued pursuant to this chapter.

“Person.” Any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Imperial, cities, and special purpose districts.

“Premises.” Any land or building where Solid Waste, Recyclable Materials, or Organic Materials are generated or accumulated.

“Receptacle.” A Container used for the temporary Collection and storage of Solid Waste, whose contents are periodically transferred to a larger container from which a Solid Waste Collector directly Collects the Solid Waste.

“Recyclable material or recyclables.” Solid Waste that is Source Separated, Segregated, or recovered through Mixed Waste Processing, has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling.

“Recycle or Recycling.” The processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

“Recycling center, station or facility.” A permitted or licensed facility whose principal function is to receive, store, convert, separate, or transfer Recyclable Materials for processing in compliance with applicable law and regulations.

“Recycling collector.” Any Person or Persons, firm, partnership, joint venture, association or corporation engaged in the Collection and transportation of Recyclable Materials generated in the City.

“Recycling Collector.” The Collection and transportation of Recyclable Materials generated in the City.

“Recycling operator.” A Person or Persons, firm, partnership, joint venture, association or corporation engaged in the Collection and Recycling of Recyclable Materials.

“Refuse.” Solid Waste or debris, except sewage, Construction and Demolition Debris, Recyclables, and/or Organic Materials placed in Source Separated Containers for Collection.

“Refuse collector.” Synonymous with Solid Waste Collector.

“Residential premises.” Premises upon which dwelling units exist, including, without limitation, single-family and Multi-Family Dwellings, apartments, boarding or rooming houses, condominiums, mobile homes and accessory dwelling units. Notwithstanding any provision to the contrary in this chapter or the City Code, premises not specifically listed may be classified as Commercial Premises (as opposed to residential) as determined by City on a case-by-case basis.

“Roll-off Box.” Solid Waste Collection containers 10-yards or larger.

“Rubbish.” Includes, but is not restricted to, all non-biodegradable waste or debris such as paper, cardboard, grass, tree or shrub trimmings, rugs, straw, clothing, wood or wood products, crockery, glass, rubber, metal, plastic, Construction and Demolition Debris and other similar materials.

“Rubbish disposal operator.” Refuse Collector.

“Salvage.” To obtain, either for compensation or other consideration, directly from the Transferor thereof, any Recyclable Material prior to the placement of the same in the Solid Waste stream or the Disposal or discarding thereof whether by Collecting, or causing to be Collected, the same from the Transferor thereof or by the Transferor thereof transporting the same to the Salvager.

“Salvager.” Includes any Person engaged in salvaging Recyclable Material prior to the Disposal or discarding of the same in the Solid Waste Stream and includes the Person generating the Recyclable Material if done by such Person's own employees or any subsidiary thereof. Salvager does not include a nonprofit entity including, but not limited to, churches, schools, community organizations or groups obtaining Recyclable Materials for purposes such as, but not limited to, fundraising activities, and rehabilitation and training programs.

“Segregate.” Source Separation includes any of the following: the placement of Recyclable Materials, Organic Materials, and Refuse each in separate and designated containers; the binding of Recyclable Materials separately from other waste material; the physical separation of Recyclable Materials, Organic Materials, and Refuse from each other.

“Self-haul.” To transport one's own Recyclable Materials to a Recycling Facility or Organic Materials to an Organic Materials Processing Facility by using a vehicle owned by the transporting entity rather than using the hauling services of a Solid Waste Collector.

“Self-hauler.” A Solid Waste Generator, Commercial Generator, Multi-Family Generator, or Special Event that transports its own Recyclable Materials to a Recycling Facility or Organic Materials to an Organic Materials Processing Facility by using a vehicle owned by that transporting entity rather than using the hauling services of a Solid Waste Collector.

“Solid waste.” All putrescible and non-putrescible solid, semi-solid and liquid wastes including Refuse, paper, Rubbish, ashes, Construction and Demolition Debris, industrial wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes and other solid and semi-solid wastes and Recyclable Materials discarded or placed for Disposal in Bins, Containers or at curbside for Collection, whether Segregated by type or commingled. Solid Waste does not include Hazardous Material as defined herein and in Public Resources Code section 40141.

“Solid Waste Collector.” Any Person or Persons, firm, partnership, joint venture, association, or corporation engaged in the Collection or transportation, Disposal, Refuse Disposal, Recycling, or Organic Materials processing of Solid Waste generated within all or part of the jurisdictional boundaries of the City, including Franchisees, Recycling Collectors, and Organic Materials collectors.

“Solid Waste Collection.” The Collection or transportation, Disposal, Refuse Disposal, Recycling, or Organic Materials processing of Solid Waste generated within all or part of the jurisdictional boundaries of the City.

“Solid waste customer.” The legal Owner or person responsible for managing Solid Waste at any Residential Premise, Commercial Premises or Multi-Family Dwelling, including subscribing to Solid Waste Collection services with a Solid Waste Collector or where allowed, Self-Hauling Solid Waste, or the legal Owner or person to whom the Solid Waste Collector submits billing invoices for Collection.

“Solid waste disposal.” Includes the Collecting, transporting and Disposal of solid waste generated within the City.

“Solid waste facility.” Any Recycling Center, materials recovery facility, intermediate processing center, incineration facility or landfill where Solid Waste may be taken for immediate processing or final Disposal. "Solid waste facility" includes a Solid Waste transfer or processing station and a Composting, transformation or Disposal facility.

“Solid waste stream.” The placement of items, including Recyclable Material and Organic Material, into authorized Receptacles for Collection by an authorized Solid Waste Collector.

“Source Separation” or “Source Separate.” The segregation into separate Containers by the Solid Waste Customer of individual components of material which otherwise would become Refuse (such as glass bottles, metal cans, newspapers, plastic containers, Organic Materials, etc.) into separate Container(s) for the sole purpose of Recycling of such materials.

“Special Event.” Means a community, public, commercial, recreational, or social event which may serve food or drink, and which may require a permit from the City. "Special Events" may include the temporary or periodic use of a public Street, publicly-owned site or facility, privately-owned site or facility, or public park. "Special Event" includes the legal entity responsible for hosting the special event, including, but not limited to the Owner, manager, or organizer, which may be the City.

“Streets.” The public and private streets, ways and alleys, except interstate highways, as the same now or may hereafter exist within the City.

“Transferor.” Includes any Person generating Recyclable Material who, for compensation or other consideration, donates, sells or otherwise conveys or transfers title thereto and possession thereof to a Salvager and does not discard the same as Solid Waste. “Transferor” does not include a resident who conveys or transfers Recyclable Material, or Organic Material, whether for consideration or as a donation, to a Salvager or any nonprofit entity including, but not limited to, churches, schools, community organizations or groups.

“Truck.” Any truck, trailer, semitrailer, conveyance or vehicle used, or intended to be used, for the purpose of Collecting Solid Waste and/or Recyclable or Organic Material or to haul or transport Solid Waste and/or Recyclable or Organic Material.

“Unauthorized removal of Recyclable Materials.” Means the unauthorized removal of Recyclable Materials by someone other than the authorized recycling agent of the City is unlawful and is a misdemeanor punishable by up to six months in jail and \$1,000 in civil penalties pursuant to Public Resources Code section 41950.

“Wood wastes.” Means lumber and wood products but excludes painted wood, chemically-treated and pressure-treated wood. “Wood waste” is a subset of Organic Materials and excludes Hazardous Materials.

“Yard wastes.” Means leaves, grass clippings, brush, branches, and other forms of Organic Materials generated from landscapes or gardens, which have been Source Separated from other Solid Waste. “Yard waste” is a subset of Organic Materials and excludes Hazardous Materials.

Section 8.39.030 – Mandatory Residential, Commercial and Industrial Collection.

Except as otherwise provided in this chapter, all Residential, Commercial and industrial waste generators shall be provided Solid Waste Collection from one or more haulers with a City franchise or Permit.

Section 8.39.040 – Authority of City Council to issue Permits or Franchises for Solid Waste Collection.

- A. Pursuant to California Public Resources Code section 40059, as the same may be amended from time to time, or any successor provision or provisions thereto, and the police power, pursuant to Article XI, Section 7 of the California Constitution, the City shall have, and hereby retains, the authority to issue Permits, including exclusive Permits or franchises, for Solid Waste Collection services, as provided for in this chapter and may, as a condition for issuing such Permits, require a bond from the Solid Waste Collector in an amount determined by the City Council to insure the faithful performance of such Collection, transportation and Disposal in accordance with this chapter and the terms and conditions imposed by the City Council. In the event that any Solid Waste Collector shall fail or refuse to conform to the conditions of the Permit or this chapter or any regulations promulgated hereunder, the Council, at its option and after a hearing called after at least ten (10) days' prior written notice to the Solid Waste Collector, may revoke such Permit. In issuing Permits for Solid Waste Collection services, the City shall not be required to issue the same based upon the offer of lowest rates, but shall be free to issue such Permits to the Person deemed best suited to comply with the provisions of this chapter, Chapter 8.36 and such other terms and conditions imposed by the City Council.
- B. Excepting existing rights that the City reserves to itself, while an exclusive Permit is in effect, a Solid Waste Collector may be granted the exclusive right to gather, Collect and remove Solid Waste, Recyclables, and Organic Materials from Premises within the City, subject to such terms and conditions as the Council may apply to the issuance of such Permit and set out in the written franchise agreement.

- C. No Person shall act as a Solid Waste Collector within the City unless such Person is a Solid Waste Collector, as defined in this chapter, or is exempt in accordance with Section 8.36.070. No Person shall permit, allow or enter into any agreement whatsoever for the Collection or transportation of Solid Waste, Recyclable Material, Organic Material, or Hazardous Material from any Residential Premises, Multi-Family Dwelling, industrial or Commercial Premises except as otherwise provided by this chapter.

Section 8.39.050 – Fees and Charges.

Fees and charges for such Solid Waste Collection services shall be those the City Council may from time to time hereafter approve by resolution. The Solid Waste Collector shall pay a franchise fee as determined by agreement in lieu of any business license tax imposed generally by City.

Customers shall pay an additional fee based on the size of their Recyclable Materials and Organic Materials Containers collected for Refuse Disposal by the Franchisee if the contents of their Recyclable Materials and Organic Materials Containers contain unacceptable levels of Contamination as defined in this chapter.

Section 8.39.060 – Scavenging and Salvaging Not Allowed.

- A. It shall be unlawful for any Person other than authorized City personnel or the Solid Waste Collector to remove any designated Recyclable Materials or Organic Materials, or Salvageable commodity after placement in any designated Recycling Collection or storage location, or Solid Waste Container.
- B. Notwithstanding the foregoing, the generator of the designated Recyclable Materials or Organic Materials, for any reason, may otherwise dispose of such materials after placement in the generator's Container or designated Recycling or Organics Collection or storage location.
- C. It shall be unlawful for any Person to disturb, modify, harm, or otherwise tamper with any Container or designated Recycling Collection or storage location containing designated Recyclable or Organic Materials, or the contents thereof, or to remove any such Container from the location where placed by the generator thereof, or to remove the contents of any such Container, unless authorized by the generator of such designated Recyclable or Organic Materials or duly authorized City personnel or Solid Waste Collector.

Section 8.39.070 – Exemptions.

- A. Yard waste and/or Green Waste removed from a Premise by a gardening, landscaping or tree trimming contractor having a City Business license and as an incidental part of a total service offered by that contractor rather than as a Disposal service, and tree trimmings, clippings and all similar materials generated at parks and other publicly maintained Premises;

- B. Construction and Demolition Debris removed from a Premise by a licensed contractor as an incidental part of a total service offered by that contractor rather than as a Disposal service;
- C. The Collection of Hazardous Material or dangerous waste as part of a Hazardous Material Collection activity authorized by the Imperial County Environmental Health Department, including, without limitation, liquid and dry caustics, acids, bio-hazardous, flammable or explosive materials, insecticides and similar substances; and,
- D. Recyclable Materials and Organic Materials which are generated at any Residential Premise or place of business and which are transported personally by the Owner or Occupant of such Premises (or by his or her full-time employees) to a licensed Solid Waste or Recycling Facility in a manner consistent with this chapter and other applicable laws.

Section 8.39.080 – Hazardous Material Collection.

- A. A Solid Waste Collector shall not be required to Collect Hazardous Material as part of its regular Collection activity. Liquid and dry caustics acids, flammable materials, explosive materials, insecticides, and similar substances shall not be deposited in Collection Receptacles. Any Person Collecting such substances shall, in addition to any requirements of state or federal law, obtain a Permit pursuant to this chapter.
- B. Biohazardous and/or medical waste (as defined in California Health and Safety Code Section 25117.5, as amended from time to time, or any successor provision or provisions thereto) shall not be collected by a Solid Waste Collector as part of its regular Collection activity. Anyone producing such wastes shall store, handle and Dispose of such materials only in the manner approved by the county health officer or designated deputy, and in accordance with the California Health and Safety Code. Disposal of biohazardous and/or medical waste shall be conducted pursuant to a Permit issued under this chapter in addition to any requirements imposed by state law.

Section 8.39.090 – Collection in emergencies.

In emergencies, such as the breakdown of equipment, or other unforeseen or unpreventable circumstances, where in the judgment of the City Manager the particular situation justifies such action, the City Manager may issue limited or temporary Permits to private Persons or corporations to perform any of the services regulated by this chapter subject to such reasonable fees, charges and conditions as the circumstances may warrant and as the parties involved may agree upon; provided that such fees and charges received from or paid to any private Persons or corporations under this section for any period exceeding twenty (20) days' duration shall be approved by the City Council.

Section 8.39.100 – Hours of collection.

All Solid Waste Collection from Residential areas and areas immediately adjacent to Residential areas shall be made between the hours of 7:00 a.m. and 8:00 p.m., and Collections from Commercial and industrial locations may start at 5:00 a.m.; provided, however, that the peace and quiet of Residential neighborhoods is not disrupted.

The City Manager may require a Solid Waste Collector to change hours of operation in Commercial and industrial areas if, in the City Manager's sole opinion, disruption of Residential neighborhoods occurs.

In the event that more than one Solid Waste Collector is permitted to operate in the City, whether by area or Premises, the City Manager may, in his or her discretion, require that all Solid Waste Collection activities take place on the same day of the week in the specified area in order to minimize the traffic in any given area.

Section 8.39.110 – Reasonable Care in the Exercise of Solid Waste Collection.

Solid Waste Collectors shall exercise all reasonable care and diligence in Collection activities so as to prevent spilling, scattering or dropping Solid Waste, Organic and Recyclable Materials, and shall immediately, at the time of occurrence, clean up any such spillage.

Section 8.39.120 – Solid Waste, Organic and/or Recyclable Material Containers.

It shall be the duty of every Solid Waste Customer or his/her its designee to utilize the Containers provided by the Solid Waste Collector and, on the date and during the times designated for Collection, place such Containers in the area designated for Collection. Except when placed for Collection, such Receptacles shall be kept and maintained only in storage locations prescribed by provisions of the City Code or otherwise in an inconspicuous location on the Premises, as the same presently exists or as may be amended from time to time, or as specified by use Permit or other entitlement for use.

The Solid Waste Collector shall provide each Solid Waste Customer with sufficient numbers of Containers, specifically designed for the containment of various types of Solid Waste, Organic Materials and/or Recyclable Materials, each of which shall have suitable bales or handles and a tightfitting cover which shall prevent leakage or escape of odors, and which, when filled within four (4) inches of the top shall contain all Solid Waste, Organic and/or Recyclable Materials which would ordinarily accumulate on such Premises between Collections. The exterior of such Receptacles, including covers, shall be kept clean from accumulated grease or decomposing materials. The Container colors must meet applicable Container color requirements and the City will have the final approval on Container color specifications.

Section 8.39.130 – Placement of Receptacles for Collection.

- A. Residential Premises: It shall be the duty of every Person having charge and control of any Residential Premises to set out or place Receptacles for the Collection of Refuse, Rubbish, miscellaneous debris and combined Rubbish and/or other Solid Waste, Organic and/or Recyclable Materials, as follows:

Receptacles shall be at the edge of the street in the curb-area in front of the dwelling, provided that the Solid Waste Collector may designate some other location for the placement of Receptacles when such placement will expedite Collection, as approved by the City Manager.

- B. Commercial Premises, Multi-Family Dwelling and Special Event Receptacles shall be placed in areas designated for such Containers.

Section 8.39.140 – Time and date of placement of Receptacles.

No Person shall place, or cause to be placed, any Solid Waste Container in any public highway or in any place or in any manner other than that set out in this article; provided, or at any time other than the days established by the City for the Collection thereof on the particular route involved, no earlier than sunset of the day preceding the day designated for Collection, and all Receptacles shall be removed from the place of Collection prior to 10:00 p.m. of the day the Receptacles have been emptied.

If the Containers or Receptacles are not emptied and the contents removed on the date and time scheduled by the Solid Waste Collector, such Person shall immediately notify the Solid Waste Collector or the City, and it shall be the duty of the Solid Waste Collector to forthwith arrange for the Collection and Disposal thereof.

Refuse, Rubbish, Organic and Recyclable Materials, and other Solid Waste which exceeds the limitations set forth may, in the discretion of the Solid Waste Collector, be scheduled for special Collection upon the application of the Owner or Occupant of the Premises. Special Collection Charges may be assessed by the Solid Waste Collector for this service.

No Person, other than the Owner thereof, the Owner's agents or employees or an officer or employee of the City or a Solid Waste Collector's agents or employees authorized for such purposes, shall tamper or meddle with any Solid Waste, Organic Recyclable Materials Receptacle or the contents thereof, or remove the contents thereof, or remove any Receptacle.

Section 8.39.150 – Solid Waste removal.

Pursuant to the requirements of the California Code of Regulations, title 14, Section 17331(H), as those may be amended from time to time, all Solid Waste, Organic and Recyclable Materials created, produced or accumulated in or about Residential Premises (including Multi-Family Dwellings) or Commercial Premises in the City shall be removed at least once each week. No Person who is the Occupant of any of the above-described Premises shall fail or neglect to provide for the removal of such material at least as often as prescribed in this section.

Section 8.39.160 – Refuse Disposal.

The Solid Waste Collector shall dispose of Collected wastes, at Solid Waste Collector's sole expense, at a landfill, transfer station (as defined in California Public Resources Code Section 40200) or other appropriate Disposal facility as set forth in the franchise agreement and in accordance with all federal, state and local laws and regulations.

Section 8.39.170 – Special provisions regarding method of Disposal.

The removal of apparel, bedding or other Refuse from Residential Premises or other places where highly infectious or contagious diseases have been present shall be performed under the supervision and direction of the county health officer and such Refuse shall neither be placed in Receptacles nor left for regular Collection and Disposal.

Highly flammable or explosive or radioactive Refuse shall not be placed in Receptacles for regular Collection and Disposal, but shall be removed as permitted by law at the expense of the Owner or possessor of the material.

Refuse or other Solid Waste containing water or other liquids shall be drained before being placed in a Container or Receptacle. Matter that is subject to decomposition shall be wrapped in paper or other material before being placed in a Container or Receptacle, with the exception of food wastes and green waste placed in a Container or Receptacle designated for such waste.

No Hazardous Material, battery acid, poisonous, caustic or toxic material or any other substance capable of damaging clothing or causing injury to Solid Waste Collection personnel or other persons shall be mixed or placed with any Rubbish, Solid Waste or other Refuse which is to be Collected, removed or Disposed of by a Solid Waste Collector. Such items shall be removed at the Occupant's expense only after arrangements have been made with the Solid Waste Collectors or City for such removal.

With the exception of packaged domestic Animal Waste and packaged Animal Waste associated with the raising of livestock for programs such as 4-H Clubs, Animal Waste, as defined in Section 8.39.030, shall not be placed in Receptacles for regular Collection and Disposal, but shall be removed at the Occupant's expense.

Section 8.39.180 – Burning, burial or dumping.

No Person shall burn, bury or Dispose of Solid Waste or Hazardous Material of any kind within the City except as provided in this chapter.

Section 8.39.190 – Trucks-Equipment required.

Each truck of a Solid Waste Collector shall at all times have in the cab thereof the registration of the Truck, a copy of the Permit, a certificate of insurance, and an identification card with the name of a Person to telephone in case of an accident or emergency. Each Truck shall also be equipped with a minimum five-pound fire extinguisher certified by the California State Fire Marshal and recharged as needed, but not less than once annually. Each Truck shall meet the requirements of state and federal law.

All Trucks used for Solid Waste Collection within the City shall be required to be completely enclosed with a nonabsorbent cover while transporting Solid Waste, Organic or Recyclable Materials in or through the City. "Completely enclosed with a nonabsorbent cover" means that Refuse, or Rubbish shall not be visible from the Street, nor shall any of the substances be permitted to leak, spill or become deposited along the public Streets. All Trucks used in the course of Solid Waste, Organic and/or Recyclable Materials Collection shall be

painted in colors approved by the City Manager and identified by Truck numerals, a company logo, and local telephone number and shall be kept clean and in good repair at all times.

Section 8.39.200 – Truck inspection.

- A. All Trucks shall be maintained in safe mechanical condition.
- B. Each of the Solid Waste Collector's Trucks shall be made available for inspection at the discretion of the City Manager at any point of operation.
- C. A decal may be issued by the City for each Truck complying with provisions of this article, which shall be placed on the Truck in a conspicuous place.

Section 8.39.210 – Solid Waste Collector's contact information.

Each Solid Waste Collector must maintain a local telephone number which shall be staffed for personal contact between 8:00 a.m. and 5:00 p.m. on normal working days, and at all other times with some type of mechanism for the purpose of taking messages. Each Solid Waste Collector shall maintain and keep updated a website which provides information on Solid Waste Collection and rules. Each Solid Waste Collector must review and respond to messages within one working day, if not sooner.

Section 8.39.220 – Solid Waste Collector's employees.

Each Solid Waste Collector shall provide high quality service to industry standards and supply competent, qualified, identifiable and uniformed personnel who serve the residents and Businesses of Calexico in a courteous, helpful and impartial manner.

- A. The City may, at its option, require fingerprinting of the Solid Waste Collector's employees whose services will cause them to enter onto or work in close proximity to private property.
- B. The Solid Waste Collector shall be required to hire employees without regard to race, religion, color, national origin, sex, political affiliation, or any other non-merit factor.
- C. Any employee driving Solid Waste Collector's Trucks shall at all times have in his or her possession a valid and appropriate vehicle operator's license issued by the State of California.
- D. Solid Waste Collector's employees shall be required to wear clean, identifiable uniforms when engaged in Solid Waste Collection services within the City.

Section 8.39.230 –Requirements for Solid Waste Collector Franchise.

- A. Procedure and required information for Solid Waste Collector Permit. The applicant shall file a letter with the City Manager, executed under penalty of perjury of the laws of the State of California, containing the following information:

1. Name and description of the applicant;
2. Permanent Business address and address of local office of the applicant;
3. Trade and firm name;
4. If a joint venture or a partnership or limited partnership, the names of all partners of the firm, and the names of the officers and their percentage or participation interest and their permanent addresses;
5. Facts indicating that the applicant has arranged for Solid Waste Disposal at a Disposal facility permitted to dispose of non-hazardous municipal Solid Waste and in accordance with all federal, state and local laws and regulations ;
6. Desired Collection area to be served and type of service to be provided;
7. Facts indicating that applicant is qualified to render efficient Refuse Collection Service;
8. Facts indicating that Trucks and equipment conform to all applicable provisions of this chapter;
9. Satisfactory evidence that applicant is in existence as a going concern and that the principals thereof possess at least two (2) years actual operating experience in Residential and/or Commercial Refuse Collection and Disposal;
10. Satisfactory evidence that applicant's experience as a going concern in Residential and/or Commercial Refuse Collection and Disposal derives from operations of comparable size to that contemplated by the applicant; details shall include length of other contracts, name and size of municipality, nature of service provided, and the name of the contact Person at the municipality being served;
11. Evidence that applicant is in good standing in the State of California and, in the case of a corporation organized under the laws of any other state, evidence that applicant is licensed to do business in the State of California;
12. A detailed inventory of the applicant's equipment available for use in the Solid Waste Collection area;
13. A written statement that applicant has complied, or is capable of complying, with all regulations imposed by the City, the county and the state for the Collection and Disposal of Solid Waste;
14. Facts indicating that the applicant owns or has under his or her control, in good mechanical condition, sufficient equipment to conduct the business of Solid Waste Collection adequately if granted a Permit, and that applicant owns or has access to suitable facilities for maintaining his or her equipment in a safe, clean and sanitary condition;
15. Satisfactory evidence that the issuance of a Permit is in the public interest and convenience in that there is an available market for Solid Waste Collection which can be legally served by the applicant;
16. Such other pertinent facts or information as the City Manager may require, including evidence of state certification, if applicable;
17. Any of the above provisions in conflict with certification requirements imposed by state law shall not be required.

B. Fees and requirements for permit.

1. Upon consideration of the information supplied by the applicant contained in the above-mentioned letter and following a public hearing conducted by the City Council after at least ten (10) days' prior written notice to the applicant, the City Council may issue a Permit.
 2. Each Permit granted shall apply to Solid Waste Collection for an area of the City specified therein or, in the case of Hazardous Material or bio-hazardous and/or medical waste operations, specified Commercial premises, and may be exclusive.
 3. A fee for processing Permit applications shall be set by resolution of the City Council, with review on a regular basis.
- C. Bonding of Solid Waste Collector. Before granting a Solid Waste Collector Permit under the provisions of this chapter, the Council shall require the Solid Waste Collector as a condition of the Permit, to post with the City Clerk a cash bond or surety bond in an amount determined by the City Council and furnished by a corporate surety authorized to do business in the State of California, payable to the City. The bond shall be conditioned upon the full and faithful performance by the Solid Waste Collector of obligations under the applicable provisions of this chapter, and shall be kept in full force and effect by the Solid Waste Collector throughout the life of the Permit and all renewals thereof.
- D. Indemnification by Solid Waste Collector.
1. Indemnification of City. Solid Waste Collector shall agree to protect, defend with counsel approved by the City, indemnify and hold harmless the City, its elected and appointed officials, officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or resulting in any way from Solid Waste Collector's exercise of its responsibilities under this chapter unless such claim is due to the sole negligence or willful act of the City, its officers, employees, agents or contractors, including the City's grant of a Permit to Solid Waste Collector or is otherwise not allowed by law. Subject to the scope of this indemnification and upon demand of the City, made by and through the City attorney, the Solid Waste Collector shall appear in and defend the City and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise, arising out of the exercise of this chapter.
 2. Hazardous materials indemnification. Solid Waste Collector shall indemnify, defend with counsel approved by the City, protect and hold harmless the City, its elected and appointed officials, officers, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, actual damages (including, but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses

(including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees, agents or Solid Waste Collector arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Material at any place where Solid Waste Collector stores or disposes of municipal Solid Waste pursuant to this chapter. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 USC § 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify from liability.

- E. Liability insurance. The Solid Waste Collector shall obtain, and keep in force during the term of the permit, public liability and bodily injury insurance in amounts determined by the City Council, and workers' compensation insurance covering all employees of the Solid Waste Collector. Copies of such policies, or endorsements evidencing such policies, shall be filed with the City Clerk prior to the commencement of activities authorized by the Permit. The City and its officers, elected officials, employees and agents shall be named as additional insureds on all such policies. All such policies shall contain at a minimum a provision requiring a thirty (30) day notice to be given to the City prior to cancellation, modification or reduction of limits. The amounts of public liability insurance for bodily injury and property damage shall be subject to review and adjustment by the Council.
- F. Compliance with federal, state and local laws and regulations. The Solid Waste Collector shall agree to perform under the terms of the permit in such a manner so as to comply with all applicable local and state laws and regulations pertaining to the Collection, storage and transportation of Solid Waste. The Solid Waste Collector shall also comply with all other ordinances and regulations of the City and applicable laws and regulations of the County of Imperial, State of California and the United States, and shall obtain and keep in force all required permits and Business licenses throughout the life of the Permit and all renewals thereof as well as with any and all other requirements specified by the City.

Section 8.39.240 – Permit provisions.

- A. Fees. Any franchise issued pursuant to this chapter shall provide for the payment of franchise fees to the City, may contain additional provisions agreed to by and between the City and Solid Waste Collector, and shall constitute the written agreement of those parties.
- B. Assignment or transfer of franchise. Except as otherwise specified in the franchise agreement, no assignment or transfer of a franchise issued pursuant to this

Chapter or any right accruing under such permit shall be made in whole or in part by the Solid Waste Collector without the prior express written consent of the City Council. In the event any assignment or transfer is authorized hereunder, the assignee shall assume, without qualification, the liability and all other obligations of the Solid Waste Collector. Each Solid Waste Collector shall file, on or before July 1 of each calendar year, with the City Clerk, a statement of ownership and shall verify the same as being true and correct under penalty of perjury under the laws of the State of California.

C. Revocation.

1. A Permit may be revoked at the option of the City Council in the event there is a change of ownership of any kind or nature of the operating company, unless approval therefor has been obtained hereunder. If it is determined by the City Manager that Solid Waste Collector has not complied with the provisions of this chapter, the Permit, and all other applicable statutes, ordinances, rules and regulations, the City Manager shall notify the Solid Waste Collector in writing of noncompliance and shall order compliance within thirty (30) calendar days.
2. If noncompliance is not corrected within the above-prescribed thirty-day period, the City Council, following a public hearing after at least ten (10) calendar days' prior written notice to the Solid Waste Collector, may terminate the Permit. The City Council's decision shall be final.

Section 8.39.250 – Charges for Refuse Collector service.

- A. Rate adjustments. Except as otherwise provided by the franchise agreement, all revisions in charges levied must be submitted to the City for review and action and must be approved by resolution of the City Council.

Section 8.39.270 – Solid Waste Collector reports.

Upon issuance of a franchise hereunder, the Solid Waste Collector shall submit the following, except as otherwise provided in the franchise agreement:

- A. Annual reports. The Solid Waste Collector shall prepare and submit an annual report, using a tabular and/or graphic format, or other commonly used data base management program (e.g., Excel, etc.) as approved by the City, within sixty (60) calendar days after the close of each calendar year. The report shall include, but is not limited to, the following information:
1. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of Solid Waste Customers for each class of services;
 2. A report, in a form satisfactory to the City, on the City's progress in meeting and maintaining its ability to meet its goals under applicable state laws and regulations as applied to the Solid Waste Collector's service area, along with any recommended changes;

3. A revenue statement, setting forth quarterly compliance fees, and the basis for the calculation thereof, certified for accuracy, under penalty of perjury under the laws of the state by an officer of the Solid Waste Collector.
- B. Monthly reports. Solid Waste Collector shall prepare monthly reports, using a tabular and/or graphic format or other commonly used data base management program as approved by the City, during the term of the franchise. Monthly reports shall be submitted to the City on a quarterly basis, within twenty (20) days from the end of the quarter. At a minimum, the reports shall include:
1. Summaries of tonnage collected and disposed of by generator type, Disposal and/or Recycling Facilities used, and Disposal fees paid;
 2. Summaries of tonnage of Recyclable Material and Organic Material Collected, by material, and by route;
 3. Summaries of tonnages of non-recyclables and contaminants disposed;
 4. Summaries of tonnages, using an approved sampling methodology, of each material sold or otherwise exchanged for processing, by material type;
 5. Average market price for each material sold, and processing charges or acceptance fees for Organic Waste to other applicable materials;
 6. Percentage of commercial businesses and percentage of residences subscribing to organic waste collection services;
 7. Description of progress in meeting the implementation schedule, including the problems encountered and how they were resolved;
 8. Summaries of the number of service complaints by route, including the date, nature of complaint, and how it was resolved.
- C. Ad hoc reports. Solid Waste Collector shall provide all required reports of varying detail and format, including participation studies, and waste evaluation and sampling studies on a quarterly basis or as required by SB 1383 regulations and as specifically requested by the City, to meet reporting requirements to CalRecycle and meet unforeseeable information queries of the California Integrated Waste Management Board, Imperial County Integrated Waste Management Task Force, or other public agencies or as otherwise reasonably requested by the City.

Section 8.39.280 – Adverse information.

The Solid Waste Collector shall provide the City two (2) copies of all reports, or other material adversely affecting the Solid Waste Collector submitted by Solid Waste Collector to the California Environmental Protection Agency, to CalRecycle or any other federal or state agency. Copies shall be submitted to the City simultaneously with Solid Waste Collector's filing of such matters with said agencies. Solid Waste Collector's routine correspondence to said agencies need not be automatically submitted to the City, but shall be made available to the City upon written request.

- A. Solid Waste Collector shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted

by the Solid Waste Collector to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other governmental bodies relating specifically to Solid Waste Collector's performance of services pursuant to the Permit. Any confidential data exempt from public disclosure shall be retained in confidence by the City and its authorized agents and shall not be made available for public inspection.

- B. Solid Waste Collector shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.
- C. All reports and records required under this or any other section shall be furnished at the sole expense of the Solid Waste Collector.
- D. A copy of each Solid Waste Collector's annual and other periodic public financial reports and those of its parent, subsidiary and affiliated corporations and other entities, as the City requests, shall be submitted to the City within thirty (30) days after receipt of a request.

Section 8.39.290 – Failure to report.

The refusal, failure or neglect of the Solid Waste Collector to file any of the reports required, or to provide adverse information, or the inclusion of any materially false or misleading statement or representation made knowingly by the Solid Waste Collector in such report shall be deemed a material default under the franchise, and shall subject the Solid Waste Collector to all remedies, legal or equitable, which are available to the City under the permit or otherwise.

Section 8.39.300 – Additional requirements of Solid Waste Collectors (Authorized Haulers).

- A. Solid Waste Collectors other than the exclusive franchisee shall obtain and maintain a Business license with the City.
- B. Solid Waste Collectors shall keep in separate containers those Refuse, Recyclable Materials, and Organic Materials that have been Source Separated by Commercial Generators, Multi-Family Generators, Residential Premises, or Special Events.
- C. Solid Waste Collectors shall ensure that Segregated Recyclable Materials are delivered to a Recycling facility and that Segregated Organic Materials are delivered to an Organic Materials Processing Facility, except that a Container that contains unacceptable levels of Contamination may be delivered for Refuse Disposal if the Solid Waste Collector notifies the City of the occurrence; the date of the occurrence; and the account name, primary contact, phone number, billing address, and service address for the Solid Waste Customer at which the Container is located.
- D. Within five days of a written request by the City, Solid Waste Collector(s) shall provide progress reports providing the following information, at a minimum:

1. Total number of Solid Waste Customers to whom the Solid Waste Collector currently provides Refuse, Recyclable Materials, and Organic Materials Collection Service within the City's boundaries;
2. For each Solid Waste Customer, the account name, identifying number, primary contact, phone number, billing address, and service address;
3. Information on the type of Collection service provided, such as Refuse, Recyclable Materials, or Organic Materials services;
4. The weekly volume and type of Collection service provided, including the number, type, and size of Containers serviced and the days of service for each Container;
5. Name and location of the Solid Waste Facilities where materials are delivered for processing;
6. List of accounts not in compliance with this Chapter, including whether they are excluded or exempt based on the exemptions in Section 8.39.310 below.

ARTICLE II: MANDATORY COMMERCIAL AND MULTI-FAMILY RESIDENTIAL RECYCLING

Section 8.39.310 – Application of this Article.

- A. Exclusions. Commercial Solid Waste Customers, Multi-Family Dwelling Solid Waste Customers and Special Events who generate fewer than two (2) cubic yards of Refuse for Collection service per week shall be excluded from the requirements of this Article.
- B. Exemptions. Multi-Family Generators, Commercial Generators, and Special Events that can document using the methods described in subsections D. or E. of this section pertain to their operations shall be exempt from the requirements of this chapter:
- C. No Generation of Recyclable Materials and/or Organic Materials. Solid Waste Customers, Commercial Generators, and entities responsible for Special Events may be exempt from the requirements of this chapter if the Solid Waste Customer, Commercial Generator, or Special Event demonstrates to the sole satisfaction of the City Manager or her designee that based upon the criteria set out in this Chapter, no Recyclable Materials or Organic Materials are generated on Premises.
- D. Multi-Family Dwelling Solid Waste Customers may be exempt from the requirements of this chapter if the City determines that either:
 1. There is inadequate space for a Solid Waste Customer to store Containers for Recyclable Materials or Organic Materials on site and that it is infeasible for the Solid Waste Customer to share Recyclable Materials or Organic Materials Containers with adjacent Commercial Premises or Multi-Family Dwellings; or

2. Compliance with this chapter will result in violating City zoning or other regulations.
- E. Commercial Generators, Multi-Family Generators, and Special Events may be exempt from the requirements of this chapter if the City determines that either:
1. The Solid Waste Customer that is responsible for managing Solid Waste for the Commercial Generator, Multi-Family Generator, or Special Event is excluded or exempt from providing Containers for Recyclable Materials or Organic Materials; or
 2. There is inadequate space for the Commercial Generator or Special Event to store Receptacles for Recyclable Materials or Organic Materials on site and that it is infeasible for the Commercial Generator or Special Event to deposit Recyclable or Organic Materials directly into Containers without an intermediate Receptacle; or
 3. Compliance with this chapter will result in violating City zoning or other regulations.
- F. Verification of Exemption. The Solid Waste Customer, Commercial Generator, or Special Event shall petition the City Manager with a written request for an exemption documenting the circumstances of a claimed exemption. The City Manager through her designee may visit the Solid Waste Customer's, Commercial Generator's, or Special Event's Premises; examine the Receptacles for Refuse, Recyclable Materials, or Organic Materials; or take other actions to verify the circumstances identified in the petition. The Solid Waste Customer, Commercial Generator, or Special Event requesting an exemption shall not be granted an exemption from the requirements of this chapter if the City determines that (1) Recyclable Materials or Organic Materials are generated on the Premises, (2) it is feasible for Containers and Receptacles for Recyclable Materials and, as necessary, for Organic Materials to be placed on the Premises, and (3) it is feasible to share Recycling Containers with an adjacent Commercial Premises or Multi-Family Dwelling.
- G. The City by resolution may impose an administrative fee on petitioning entities to cover the costs of processing such petitions. The City may require the Solid Waste Customer, Commercial Generator, or Special Event that is granted an exemption from the requirements of this chapter to submit a renewal of its petition for an exemption every two years from the date the exemption was granted by the City.

Section 8.39.320 – Solid Waste Customers.

Each Commercial customer, Multi-Family Dwelling or entity responsible for a Special Event, shall be responsible for ensuring and demonstrating its compliance with the requirements of this chapter and specifically this Article II. Each Solid Waste Customer shall:

- A. Subscribe to an adequate level of service for Recyclable Materials and, when applicable, Organic Materials generated at the Commercial Premises, Multi-Family Dwelling, or Special Event if the customer does not Self-Haul those

Recyclable Materials or Organic Materials to a Recycling or Organics Materials Processing Facility pursuant to the provisions of Section 8.39.350 of this Article.

- B. Provide, directly or through the Solid Waste Collector, appropriate and sufficient Containers, placed in appropriate and accessible locations with adequate signage, to ensure maximum segregation of Recyclable Materials by all Commercial Generators, Multi-Family Generators, and Special Events and to ensure maximum segregation of Organic Materials by food service providers.
- C. Provide, post and maintain signs containing information and instructions on the proper Segregation and storage of Recyclable Materials and Organic Materials in areas where Containers are located. The signs shall meet the requirements of CalRecycle when available and the hauler shall provide sample signs.
- D. Ensure that all Containers used for Collecting and storing Recyclable Materials and Organic Materials (1) are labeled with or have adjacent to the Container signs that display the appropriate information to enable users to clearly differentiate which Containers are used for Recyclable Materials, Organic Materials, and Refuse; (2) display the name of the Solid Waste Collector that provides Collection service of the Container; and (3) ensure that users of the Containers make efforts to minimize the Contamination of material placed in the Containers.
- E. Distribute this Chapter 8.39 and appropriate educational materials to all Commercial Generators, Multi-Family Generators, and legal entities responsible for Special Events at the Commercial Premises or Multi-Family Dwelling at least once each year by mail or personal delivery. All new Commercial Generators, Multi-Family Generators, and Special Events shall receive this information upon occupancy or contracting for service.
- F. Educational materials shall include (1) the requirement and procedures to ensure the accurate Segregation of Recyclable Materials and Organic Materials from refuse; (2) the Commercial Generator's, Multi-Family Generators, or Special Event's responsibilities regarding compliance with this Chapter; and (3) the types and location of Recyclable Materials, Organic Materials, and Refuse Containers.
- G. Ensure that instructions or training materials provided to Commercial Generators, Multi-Family Generators, and Special Events are promptly made available to the City upon request.
- H. Ensure that the contents of the Recyclable Materials and Organic Materials Containers are not collected for Refuse Disposal unless the contents of these Containers include unacceptable levels of Contamination.
- I. Customers shall pay an additional fee based on the size of the Container for Recyclable Materials and Organic Materials Containers that are collected for Refuse Disposal by the Franchisee if the contents of their Recyclable Materials and Organic Materials Containers contain unacceptable levels of Contamination as defined pursuant to Section 8.39.020.

Section 8.39.330 – Commercial generators.

In addition to the requirements of Section 8.39.320, each Commercial Generator shall be responsible for ensuring and demonstrating its compliance with the requirements of this chapter. Each Commercial Generator shall:

- A. Ensure the Segregation of Recyclable Materials and Organic Materials from Refuse by placing each type of material in a separate designated Receptacle or Container, and ensure that employees, contractors, volunteers, customers, visitors, and other Persons on site Segregate Recyclable Materials and Organic Materials.
- B. Provide an adequate number and type of labeled Receptacles needed for Segregating and storing Recyclable Materials and Organic Materials and provide adequate access to those Receptacles.
- C. Post and maintain signs containing information and instructions on the proper Segregation and storage of Recyclable Materials and Organic Materials in areas where Receptacles are located.
- D. Ensure that all Receptacles used for Collecting and storing Recyclable Materials, Organic Materials, and Refuse are labeled with signs or labels that display the appropriate information to enable users to clearly differentiate which Receptacles are used for Recyclable Materials, Organic Materials, and Refuse, to minimize the Contamination of material placed in Receptacles.
- E. Provide adequate instructions to employees, contractors, and volunteers of the requirements of this chapter, including (1) the requirement and procedures to ensure the Segregation of Recyclable Materials and Organic Materials from Refuse; (2) the employee's, contractor's, and volunteer's responsibilities regarding compliance with this Chapter; and (3) the types and location of Receptacles and Containers for Recyclable Materials, Organic Materials, and Refuse.
- F. Ensure that instructions or training materials provided to employees, contractors, and volunteers are promptly made available to the City upon request.
- G. Ensure that the contents of Receptacles are deposited in the proper Container and ensure that the contents of the Receptacles for Recyclable Materials and Organic Materials are not delivered to Refuse Containers.
- H. Commercial Generators may be assessed an additional fee based on the size of the Container for Recyclable Materials and Organic Materials Containers that are Collected for Refuse Disposal by the Franchisee if the contents of their Recyclable Materials and Organic Materials Containers contain unacceptable levels of Contamination.

Section 8.39.340 – Special Events.

The entity responsible for a Special Event shall be responsible for ensuring and demonstrating compliance with the requirements of this chapter. In addition to other requirements in this chapter and the Municipal Code, each Special Event shall:

- A. Segregate Recyclable Materials and, for Special Events that include food service or use food service establishments, Organic Materials from Refuse by placing each type of material in a separate designated Receptacle or Container, and ensure that employees, contractors, volunteers, customers, visitors, and other Persons on site Segregate Recyclable Materials and Organic Materials.
- B. Ensure the Special Event has access to an adequate number and type of Containers needed for collecting and storing Recyclable Materials and, when applicable, Organic Materials generated at and by the Special Event.
- C. Provide or ensure the provision of adequate Receptacles throughout the Special Event location to make the Segregation of Recyclable Materials and Organic Materials convenient for employees, volunteers, contractors, vendors, exhibitors, presenters, visitors, attendees, customers, and other persons on site.
- D. Provide or ensure the provision of an equal or greater number of Receptacles for Recyclable Materials and, when applicable, Receptacles for Organic Materials, to Receptacles for Refuse. Individual Receptacles for Recyclable Materials, Organic Materials, and Refuse shall be placed as close together as possible throughout the Special Event location in order to provide equally convenient access to Receptacles for Recyclable Materials and Organic Materials as to Receptacles for Refuse.
- E. Ensure that all Receptacles used for Segregating and storing Recyclable Materials, Organic Materials, and Refuse are affixed with signs or labels that display the appropriate information to enable users to accurately Segregate Solid Waste and to clearly differentiate which Receptacles are used for Recyclable Materials, Organic Materials, and Refuse, to minimize the Contamination of material placed in Receptacles.
- F. Require food vendors and food service establishments to have at least one separate Receptacle each for Recyclable Materials, Organic Materials, and Refuse for use by employees, contractors, custodians, customers, visitors, and other Persons on site.
- G. Distribute chapter requirements and appropriate informational materials to all vendors, exhibitors, and other Commercial Generators during event planning and setup.
- H. Ensure that the contents of the Receptacles for Recyclable Materials and Organic Materials are not delivered to Refuse Containers unless they include unacceptable levels of Contamination.

Section 8.39.350 – Self-haulers.

- A. Nothing in this chapter shall preclude any person, Solid Waste Customer, Commercial Generator, Multi-Family Generator, or Special Event from self-hauling Recyclable Materials or Organic Materials generated by that entity to a Recycling or Organics Materials Processing Facility before placement in the Solid Waste Stream.
- B. Self-Haulers shall:
 - 1. Comply with the requirements in this chapter by delivering for recycling those items that can be recycled by local Recycling Facilities and establishments and shall comply by delivering for Organic Materials processing those items that are accepted by local Organic Materials Processing Facilities.
 - 2. Provide proof of compliance with this chapter, upon request by the City; proof includes but is not limited to a receipt from a Recycling or Organic Materials Processing Facility that clearly identifies the type and quantity of material delivered and an application for Exemption from the Necessity for Refuse Collection.
- C. Notwithstanding, Self-Haulers shall not dispose of any solid waste in any manner not permitted by this chapter. To do so is a violation of this Chapter punishable as set out in Section 8.39.380.

Section 8.39.360 – City Authority.

The City Manager is authorized to administer and enforce the provisions of this Chapter. To the extent permitted by law, the City Manager may inspect any Collection Container and any Solid Waste Collector's load for Refuse, Recyclable Materials, or Organic Materials. To the extent permitted by law, the City or its designee may also inspect the Premises of any Residential Premise, Commercial Premises, Multi-Family Dwelling, or Special Event or Self-Hauler's load to determine compliance with the provisions of this chapter.

Section 8.39.370 – Enforcement.

The City shall enforce this chapter with the goal of maximizing the amount of Recyclable Materials and Organic Materials properly Segregated and ensuring that Recyclable Materials and Organic Materials that have been properly Segregated by the Solid Waste Customer, Commercial Premise, Multi-Family Generator, or Special Event are correctly Collected and delivered to Recycling and Organics Materials Processing Facilities. The City shall require the Solid Waste Collector to conduct the following activities to enforce this Chapter:

- A. Provide details on the requirements of this Chapter to affected Solid Waste Customers, Commercial Premises, Multi-Family Generators, and Special Events;
- B. Develop and disseminate public education and promotional materials relating to the importance of Recycling and Organic Materials processing and the availability of Recycling and Organic Materials processing opportunities available to Solid

Waste Customers, Commercial Generators, Multi-Family Generator, and Special Events;

- C. Provide technical assistance and training to Solid Waste Customers, Commercial Generator, Multi-Family Generators, and Special Events to increase Recycling;
- D. Enforce provisions of the franchise agreement for Collection of Recyclable Materials, Organic Materials, and Refuse with the Franchisee to stimulate demand for Recyclable Materials and Organic Materials Collection service.

Section 8.39.380 – Penalties.

- A. The City may issue administrative fines for violating this chapter or any rule or regulation adopted pursuant to this chapter, except as otherwise provided in this chapter. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter; provided, however, that the City may adopt regulations providing for lesser penalty amounts for Solid Waste Customers, Commercial Premises, or Special Events.
- B. A notice of violation shall be issued and served upon the Solid Waste Collector, Solid Waste Customer, Commercial Premises, or Special Event for violations of this chapter. When a violation notice is served, public nuisance proceedings and/or code enforcement proceedings under the City Code shall apply.
- C. All administrative civil penalties collected from actions brought pursuant to this chapter shall be paid to the City and shall be deposited into an earmarked account that is available to fund activities to implement the applicable provisions of this chapter.
- D. Notwithstanding, the City Attorney may seek injunctive relief or civil penalties in the Superior Court or may pursue any other remedy legally available to the City.

Section 8.39.390 – No Effect on Other Powers.

- A. This chapter does not do any of the following:
 - 1. Otherwise affect the authority of the City or its designee to take any other action authorized by any other provisions of law or regulations.
 - 2. 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.
 - 3. Prevent the City from cooperating with, or participating in, any proceeding.
 - 4. Affect in any way existing contractual arrangements including franchises, Permits, or licenses previously granted or entered into between the Solid Waste Collectors and City.

- B. Cumulative Remedies. Any remedy provided under this chapter is cumulative to any other remedy provided in equity or at law. Nothing in this chapter shall be deemed to limit the right of the City or its Solid Waste operators to bring a civil action; nor shall a conviction for such violation exempt any Person from a civil action brought by the City or its Solid Waste operators. The fees and penalties imposed under this chapter shall constitute a civil debt and liability owing to the City from the Persons, firms, or corporations using or chargeable for such services and shall be collectible in the manner provided by law.
- C. Liability. Nothing in this chapter shall be deemed to impose any liability upon the City or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

Section 8.39.400 – Disclaimer of Liability.

The degree of protection required by this chapter is considered to be reasonable for regulatory purposes. The standards set forth in this chapter are minimal standards and do not imply that compliance will ensure safe handling of Recyclable Materials, Organic Materials, or Refuse. This chapter shall not create liability on the part of the City, or any of its officers or employees, for any damages that result from reliance on this chapter or any administrative decision lawfully made in accordance with this chapter. All Persons handling Solid Waste within the boundaries of the City should be and are advised to conduct their own inquiry as to the handling of such materials. In undertaking the implementation of this chapter, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any Person who claims that such breach proximately caused injury.

Section 8.39.410 – Discretionary Duties.

Subject to the limitations of due process and applicable requirements of State or Federal laws, and notwithstanding any other provisions of this chapter, whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

SECTION 2. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional. If for any reason any portion of this Ordinance is found to be invalid by a court of competent jurisdiction, the balance of this Ordinance shall not be affected.

SECTION 5. Certification and Publication. The City Clerk of the City of Calexico shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the City in a manner permitted under California Government Code Section 36933.

INTRODUCED on the 23rd day of June, 2021, and **PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Calexico, California on the 21st day of July, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ROSIE ARREOLA-FERNANDEZ, MAYOR

ATTEST:

GABRIELA GARCIA, CITY CLERK

APPROVED AS TO FORM:

CARLOS CAMPOS, CITY ATTORNEY

SECTION 5. Certification and Publication. The City Clerk of the City of Calexico shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the City in a manner permitted under California Government Code Section 36933.

INTRODUCED on the 23rd day of June, 2021, and **PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Calexico, California on the 21st day of July, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

JAVIER MORENO, MA YOR

ATTEST:

GABRIELA GARCIA, CITY CLERK

APPROVED AS TO FORM:

CARLOS CAMPOS, CITY ATTORNEY