

ORDINANCE NO.

An ordinance of San Bernardino County, State of California, to amend Section 16.0222A of Title 1, Division 6, Chapter 2 of the San Bernardino County Code relating to the Refuse Franchise Fee and to amend Title 4, Division 6, Chapters 1, 2, 3, 4, 10 and 14 of the San Bernardino County Code, relating to Solid Waste Handling Franchise definitions, waiver requirements, Refuse Franchise Fee, and clean-up of previously amended language. ~~to amend Section 16.0222A of Title 1, Division 6, Chapter 2 of the San Bernardino County Code relating to the Refuse Franchise Fee.~~

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Title 1, Division 6, Chapter 2, Section 16.0222A of the San Bernardino County Code is amended to read as follows:

**Section 16.0222A Refuse Franchise Fee.**

- (a) Each grantee providing solid waste handling services under a franchise agreement entered into pursuant to the provisions of Division 6 of Title 4 of this Code shall pay a franchise fee to the County. The franchise fee shall be as specified in the individual Franchise Agreement ~~orecalculated~~ by multiplying the gross receipts less disposal charges collected by each grantee under its franchise agreement by ten percent. whichever is greater.
- (b) The franchise fee as ~~calculated~~ required under this section shall be paid to the County for each month ~~in which grantee collects any gross receipts less disposal charges~~ within 30 days after the end of said month.
- (c) As used in this section, the following terms shall have the meanings set forth in Division 6 of Title 4 of the San Bernardino County Code, as same may be amended from time to time.
- (1) Franchise agreement;

(2) Franchise fee;

(3) Grantee; and

(4) ~~Gross receipts less disposal charges~~ Solid waste handling services; and

~~—(5) Solid waste handling.~~

SECTION 2. Title 4, Division 6, Chapter 1 of the San Bernardino County Code is amended to read as follows:

## **CHAPTER 1: PURPOSES AND REQUIRED AUTHORIZATIONS**

### **Section**

**46.0101 Purposes.**

**46.0102 Required Authorizations.**

### **Section 46.0101 Purposes.**

The purposes of Division 6 are set forth below (all terms are as defined in Chapter 2):

(a) To allow for the establishment of solid waste handling franchises within the unincorporated portion of San Bernardino County, pursuant to authority cited in Government Code section 25827, in Public Resources Code sections 40057 through 40059 or 49200 through 49205, in Code of Regulations, Title 14, sections 17332 and 17333, and any other applicable State or local law. The implementation of franchises through entering into franchise agreements with grantees will assist the County:

(1) In meeting its obligation to provide solid waste handling services ~~facility fee~~ as required in Public Resources Code section 40057;

(2) In meeting the requirements of AB 939, as may be amended, and all subsequent State laws and regulations which mandate that the County reduce the amount of solid waste disposed in County landfills by certain numerical thresholds by providing its citizens with source reduction, recycling and composting programs and opportunities;

- 1 (b) To help ensure that residents of the unincorporated County receive the similar  
2 quality of waste collection and recycling services as do those residents in the  
3 incorporated cities and towns of San Bernardino County;
- 4 (c) To ensure that programs and service Levels for solid waste handling within the  
5 unincorporated spheres of influence of incorporated cities and towns will replicate,  
6 to the extent possible, programs and service levels of adjacent cities and towns;
- 7 (d) To minimize, to the extent possible, disruption of programs and services to  
8 unincorporated residents in the event of annexations;
- 9 (e) To help quantify the waste stream from the unincorporated County in order to  
10 comply with Diversion requirements of AB 939, as may be amended;
- 11 (f) To provide by agreement, an opportunity for predictable levels of waste at County  
12 landfills to ensure adequate funding for closure/post-closure activities; and
- 13 (g) To ensure compliance with the mandatory organic waste disposal reduction  
14 requirements of SB 1383.

15 **Section 46.0102 Required Authorizations.**

- 16 (a) Except as otherwise provided in subdivisions (b) and (c) of this section, no person  
17 shall engage in, solicit, contract for or provide, in the unincorporated County, solid  
18 waste ~~facility fee~~handling services without such person having and maintaining:
- 19 (1) A health and safety permit authorizing the collection, transfer or removal of  
20 refuse (within the meaning of Article 2 of Chapter 8 of Division 3 of Title 3  
21 of this Code); and
- 22 (2) (A) With respect to a franchise area, a franchise agreement authorizing  
23 the person to provide the specified solid waste handling service  
24 being provided; or
- 25 (B) With respect to a refuse collection area, or any portion thereof which  
26 is not a franchise area subject to a franchise agreement, a Class A  
27 permit or temporary permit as provided for in Article 2.1 of Chapter 8  
28 of Division 3 of Title 3 of this Code.

1 (b) (1) Notwithstanding Subdivision (a), above, any person may engage in or  
2 provide, in the unincorporated County, those solid waste facility fee handling  
3 services related to performing as a garbage hauler (within the meaning of  
4 Chapter 8 of Division 3 of Title 3 of this Code), without such person being  
5 required to have or maintain a franchise agreement or the Class A permit  
6 or temporary permit provided for in Article 2.1 of Chapter 8 of Division 3 of  
7 Title 3 of this Code.

8 (2) Notwithstanding Subdivision (a), above, any person may engage in or  
9 provide, in the unincorporated County, those solid waste facility fee handling  
10 services which are related solely to one of the types of solid waste set forth  
11 below, without such person being required to have or maintain a franchise  
12 agreement or the Class A permit or temporary permit provided for in Article  
13 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

14 (A) Abandoned vehicles and parts thereof.

15 (B) Ashes.

16 (C) Dewatered, treated or chemically fixed sewage sludge.

17 (D) Self-generated waste or waste generated and hauled by the property  
18 owner.

19 (E) Green waste or yard trimmings generated as an incidental part of  
20 providing gardening, landscaping or landscape maintenance as a  
21 professional gardener or landscaper.

22 (F) Inert materials or demolition waste from remodeling jobs which are  
23 generated as an incidental part of providing such remodeling  
24 services, provided that the construction contractor is not a hauling  
25 service or solid waste enterprise, does not separately or additionally  
26 charge for the incidental service of removing, transporting or  
27 disposing (except for the tipping fee) of the inert materials or  
28 demolition waste, and utilizes only his or her own employees and

1 equipment to collect, transport, and dispose of same.

2 (G) Recyclables that are sold or donated by the generator of such  
3 materials to a party other than the grantee of a franchise. A mere  
4 discount or reduction in price of the hauler's charges for the handling  
5 of such materials is not a sale or donation within the meaning of  
6 Division 6.

7 (H) Food waste used as animal feed. Food waste or other organic waste  
8 diverted from disposal by delivery to hog farms or otherwise used as  
9 animal feed, pursuant to the provisions of Public Resource Code  
10 section 40059.4

11 (I) Edible food recovered for human consumption. Edible food that is  
12 collected from a generator by other person(s), such as a person from  
13 a food recovery organization or food recovery service, for the  
14 purposes of food recovery; or that is transported by the generator to  
15 another person(s), such as a person from a food recovery  
16 organization, for the purposes of food recovery, regardless of  
17 whether the generator donates, sells, or pays a fee to the other  
18 person(s) to collect or receive the edible food from the generator.

19 (J) Exempt persons. A person or entity that has been given an  
20 exemption by the County from the uniform handling collection  
21 ordinance.

22 (3) Subdivision (b)(1), above, shall have no application in any franchise area to  
23 the extent that the County provides in the franchise agreement(s)  
24 establishing such franchise area that any or all of the solid waste ~~facility~~  
25 feehandling services related to either performing as a garbage hauler or to  
26 the types of solid waste enumerated in Subdivision (b)(2) are to be provided  
27 pursuant to a franchise agreement or agreements; so long as the person  
28 and/or the solid waste handling service being provided do not otherwise fit

1 within one or more of the exemptions provided in Subdivision (c) of this  
2 Section. The Division shall maintain a list of all areas of the County within  
3 which a franchise agreement is required in order to provide any of the solid  
4 waste facility fee handling services which are related to performing as a  
5 garbage hauler or solely to a type of solid waste enumerated in Subdivision  
6 (b)(2).

- 7 (c) The provisions of Subdivisions (a) and (b)(3) of this Section shall not apply to those  
8 persons and/or solid waste facility fee handling services specified in section  
9 33.0843 of this Code.

10  
11 SECTION 3. Title 4, Division 6, Chapter 2 Sections 46.0201(q), (tt) through (rrr),  
12 (lllll), and (mmmmm) of the San Bernardino County Code are amended to read:

- 13 (q) CHANGE IN LAW. The imposition (or removal), after the establishment of a total  
14 rate relative to a franchise agreement, of any duty or burden imposed upon the  
15 grantee in the performance of the solid waste handling services required of it under  
16 its franchise agreement which is or becomes additional to (or is subtracted from)  
17 or different from those duties required or contemplated in its franchise agreement,  
18 or which must be performed in a different manner from that in which it is initially  
19 contemplated to be performed, and which results from any of the following:

- 20 (1) The enactment, issuance, adoption, repeal, amendment or modification of  
21 any Federal, State or local law, statute, ordinance or regulation.
- 22 (2) A regulatory agency or other administrative agency interpreting a  
23 regulation, a judicial decision of a Federal court interpreting Federal law or  
24 statute, or a judicial decision of a court having jurisdiction within California  
25 interpreting a Federal, State or local law, statute, ordinance or regulation, in  
26 a manner different from the interpretation which had previously been  
27 generally relied upon in California within the solid waste collection and  
28 hauling industry.

(3) CHANGE IN LAW does not include any of the items noted in Subdivisions (1) or (2) above, which relate to any tax, [other than a business license tax imposed by the County on a grantee's performance of solid waste ~~facility~~ feehandling services under its franchise agreement] including without limit, any tax based or measured on net or gross income, any business, payroll or franchise tax or any employment tax.

...

(tt) DWELLING or DWELLING UNIT. Any individual living unit in a Single-Family or Multi-Family structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a hotel or motel.

~~(ttuu)~~ EDIBLE FOOD. Food intended for human consumption, or as otherwise defined in 14 CCR section 18982(a)(18). Edible food is not solid waste if it is recovered and not discarded. Nothing in this Chapter or in 14 CCR Division 7, Chapter 12 requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.

~~(uuvv)~~ ELECTRONIC WASTE. Electronic waste materials generated by residential or commercial subscribers that render the items hazardous depending upon their condition and density, such as, but not limited to, televisions, computer monitors containing cathode ray tubes (CRTs), cell phones, scanners, fax machines and other items as determined by applicable laws and regulations.

~~(wwwv)~~ ENFORCEMENT ACTION. An action of the County to address noncompliance with this Chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

~~(wwwx)~~ EXCLUDED WASTE. Hazardous substance, hazardous waste, infectious waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the County and its generators, reasonably believe(s) would, as a result of or

upon acceptance, transfer, processing or disposal, be a violation of local, State or Federal law, regulation or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in County's or its designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the County, or its designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in single-family or multifamily solid waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with California Public Resources Code section 41500 and 41802. Excluded waste does not include used motor oil filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for Collection through the County's collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by the County for collection services.

(~~xx~~yy) FOOD RECOVERY. Actions to collect and distribute food for human consumption which otherwise would be Disposed, as defined in 14 CCR section 18982(a)(24).

(~~yy~~zz) FOOD RECOVERY ORGANIZATION. An entity that primarily engages in the collection or receipt of edible food and distributes that edible food to the public for food recovery either directly or through other entities, including, but not limited to:

- (1) A food bank as defined in section 113783 of the Health and Safety Code;
- (2) A nonprofit charitable organization as defined in section 113841 of the Health and Safety Code; and
- (3) A nonprofit charitable temporary food facility as defined in section 113842 of the Health and Safety Code.

(~~zz~~aaa) FOOD RECOVERY SERVICE. A person or entity that collects and transports edible food to a food recovery organization or other entities for food



1 recovery.

2 (aaabbb) FOOD SCRAPS. All food such as, but not limited to, fruits, vegetables,  
3 meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and  
4 eggshells. Food scraps excludes fats, oils, and grease when such materials are  
5 source separated from other solid waste food scraps.

6 (bbbccc) FOOD-SOILED PAPER. Compostable paper material that has come in  
7 contact with food or liquid, such as, but not limited to, compostable paper plates,  
8 paper coffee cups, napkins, pizza boxes, and milk cartons.

9 (cccddd) FOOD WASTE. Source separated food scraps, food-soiled paper, and  
10 compostable plastics. Food waste is a subset of organic waste.

11 (dddeee) FRANCHISE AGREEMENT. The agreement entered into between the  
12 County and the grantee under the provisions of section 46.0301 which  
13 authorizes/requires the grantee to provide solid waste handling services in a  
14 specified franchise area.

15 (eeefff) FRANCHISE AREA. The geographic territory in the unincorporated County  
16 for which the Grantee has been granted a franchise to provide solid waste handling  
17 services, as specified in each franchise agreement.

18 (fffggg) FRANCHISE FEE. The fee paid to the County by the grantee in  
19 consideration of the granting of a franchise pursuant to this Division.

20 (ggghhh) GARBAGE HAULER. Any person or entity who collects garbage, unmixed  
21 with rubbish, and transports it to a commercial garbage-feeding hog ranch or to a  
22 commercial establishment for processing for use in livestock feeding pursuant to  
23 the requirements in Public Resources Code section 40059.4(b)(1-5).

24 (hhhiii) GENERATOR. Any person who first discards materials, and by that act  
25 makes discarded materials subject to regulation under federal, State, or local  
26 regulations.

27 (iiijjj) GRANTEE. A person granted a franchise pursuant to a franchise agreement.

28 (jjjkkk) GRAY/BLACK CONTAINER. The same meaning as in 14 CCR section 18982.2(a)

1 and shall be used for the purpose of storage and collection of gray/black container  
2 waste or mixed waste.

3 (~~kkklll~~) GRAY/BLACK CONTAINER WASTE. Solid waste that is collected in a gray/black  
4 container that is part of a three-container organic waste collection service that  
5 prohibits the placement of organic waste in the gray/black container as specified  
6 in 14 CCR sections 18984.1(a) and (b) or as defined in 14 CCR section  
7 17402(a)(6.6). For the purposes of this franchise agreement, gray/black container  
8 waste includes carpet and textiles.

9 (~~lllmmm~~) GREEN CONTAINER. The same meaning as in 14 CCR section 18982.2(a) and  
10 shall be used for the purpose of storage and collection of SSGCOW.

11 (~~mmnnnn~~) GREEN WASTE. Discarded materials consisting of grass clippings, leaves,  
12 branches, tree trunks and other vegetative matter not more than six inches in  
13 diameter or four feet in length.

14 (~~nnnooo~~) GROSS RECEIPTS. All monies received by grantee for providing the solid  
15 waste handling services specified in its franchise agreement.

16 (~~ooopp~~) GROSS RECEIPTS LESS DISPOSAL CHARGES. Gross receipts less that  
17 part of the monies received by the grantee that are collected from subscribers for  
18 payment of the fee imposed for disposing of the solid waste at a landfill disposal  
19 facility and the fee imposed for other operations.

20 (~~pppggg~~) GROSS RECEIPTS FOR COMMERCIAL FOOD WASTE SERVICES. All  
21 monies received by grantee for providing the food waste handling services  
22 specified in its franchise agreement.

23 (~~qqrrrr~~) GROSS RECEIPTS FOR COMMERCIAL FOOD WASTE SERVICES  
24 LESS PROCESSING COSTS. Gross receipts for commercial food waste services  
25 less that part of the monies received by the grantee that are collected from  
26 subscribers for payment of the fee imposed for processing of the food waste at an  
27 organic waste processing facility.

28 (~~rrr~~) ~~HIGH DIVERSION ORGANIC WASTE PROCESSING FACILITY. A~~

~~high~~<sup>[SJ1][GJ2]</sup> diversion organic waste processing facility as defined in 14 CCR § 18982(a)(33). Per SB 1383, the high diversion processing facility is a facility that is in compliance with the reporting requirements of 14 CCR § 18815.5(d) and meets or exceeds an annual average mixed waste organic content recovery rate of fifty percent between January 1, 2022 and December 31, 2024, and seventy-five percent after January 1, 2025 as calculated pursuant to 14 CCR § 18815.5(e) for organic waste received from the mixed waste.

...

(IIII) SUBSCRIBER. Any person receiving solid waste ~~facility fee~~handling services pursuant to a franchise agreement.

(mmmm) TOTAL RATE. The inclusive rate schedule attached to each franchise agreement which provides the rates to be paid to grantee by subscribers in consideration of the solid waste ~~facility fee~~handling services provided by grantee under its franchise agreement.

SECTION 4. Title 4, Division 6, Chapter 3, Sections 46.0301 and 46.0302 of the San Bernardino County Code are amended to read as follows:

**46.0301 Franchise Formation and Terms.**

(a) The award by the Board of a franchise for solid waste handling shall be evidenced by approval and execution of a franchise agreement. The Board may award exclusive or non-exclusive solid waste handling franchises in the unincorporated County, with or without competitive bidding, through individual franchise agreements. A franchise agreement shall be granted by the Board when it determines that public convenience and necessity are served by the award of the franchise, and where a partially or wholly exclusive franchise is awarded without competitive bidding, that the granting of such a franchise is in the best interests of County residents based on the health, safety and well-being of residents in the franchise area where the partially or wholly exclusive franchise is awarded. Each

franchise agreement shall specify the specific solid waste facility feehandling services to be provided by grantee; a different grantee may be granted a franchise to provide the same, or different, solid waste facility feehandling services in the same franchise area.

(b) In order to qualify for the award of a franchise, an applicant must:

- (1) Have, or obtain prior to the approval of the franchise agreement by the County, and maintain for the term of its franchise agreement, a current health and safety permit to the extent such a permit is required under the provisions of Article 2 of Chapter 8 of Division 3 of Title 3 of this Code in order to provide the solid waste facility feehandling services to be provided under the franchise agreement; and
- (2) Demonstrate a minimum of three years' experience in providing substantially the same type, class and extent of services as those for which the franchise is sought; and
- (3) Provide to the Director the information which is required of an applicant for a health and safety permit pursuant to § 33.0825 of this Code.

(c) (1) The terms and conditions by which the grantee shall be obligated to provide solid waste facility feehandling services shall be as set forth in this Division 6 and, with respect to the items set forth in this Subdivision (c), as set forth in the franchise agreement.

(A) The franchise area, including any uniform handling area.

(B) The specific solid waste facility feehandling services to be provided by grantee, including appropriate operating requirements.

(C) The total rates related to the specified solid waste facility feehandling services to be provided by grantee and the method of billing its subscribers.

- (2) (A) If the County and the grantee so agree, the franchise agreement may specify the solid waste facility or facilities to which the grantee will

1 transport the solid waste collected pursuant to solid waste ~~facility~~  
2 feehandling services provided under the franchise agreement.

3 (B) If the County and the grantee so agree, the franchise agreement may  
4 allow the County to specify a different or additional solid waste facility  
5 to which the grantee will transport the solid waste collected pursuant  
6 to the solid waste ~~facility~~ feehandling services provided under the  
7 franchise agreement. In such event, the franchise agreement may  
8 contain a cost per ton mile figure which sets forth the increase in the  
9 grantee's demonstrable costs related to such a change.

10 (C) If the County and the grantee so agree, the franchise agreement may  
11 specify that upon the effective date of the franchise agreement the  
12 grantee waives and forgoes any other rights it might have to provide  
13 solid waste ~~facility~~ feehandling services in other specified portions of  
14 the unincorporated County, including any rights it might otherwise  
15 have under Public Resources Code § 49520 or other law to receive  
16 advance notice of the cancellation of any permit or other  
17 authorization to provide such services.

18 (d) (1) The franchise agreement shall establish the initial term and any extensions.  
19 Notwithstanding the forgoing, the County reserves the right to increase the  
20 term or any extension if it believes that such an increase is in the best  
21 interests of the subscribers being serviced by the grantee under the  
22 franchise agreement.

23 (2) A franchise agreement may provide for automatic extensions; however, the  
24 Board may determine in its sole discretion that a franchise agreement shall  
25 not be extended. The action to not extend a franchise agreement must be  
26 taken no later than 60 days prior to the automatic renewal date of the  
27 franchise agreement. Such action shall terminate the automatic renewal  
28 and extension provision only and such franchise agreement shall remain in

1 effect for the balance of the term then outstanding.

2 (e) The franchise agreement shall set forth the total rate (i.e., the inclusive schedule  
3 of rates to be paid to grantee for solid waste ~~facility fee~~handling services provided  
4 to subscribers under its franchise agreement). The total rate shall be subject to  
5 review and adjustment pursuant to the provisions of this Division 6. If and when  
6 adjustments to the total rate are made pursuant to the provisions of this Division  
7 6, the Director shall cause a certification of each such adjustment to be lodged with  
8 the County's official copy of the franchise agreement. No total rate or adjustment  
9 to same shall be implemented until approved by the Board or by the Director, as  
10 provided in this Division 6.

11 (f) Non-performance by grantee of the terms and conditions contained in this Division  
12 6 or in its franchise agreement, or the occurrence of one or more of the events set  
13 forth in § 33.0827 of this Code, shall provide grounds for the loss of or limitation  
14 upon the grantee's right to provide solid waste ~~facility fee~~handling services  
15 pursuant to its franchise agreement and for the termination of its franchise  
16 agreement. Grantee shall perform no solid waste ~~facility fee~~handling services  
17 under its franchise agreement without possessing the required health and safety  
18 permit.

19 (g) Except when otherwise required by applicable Federal, State or local law, the  
20 terms and conditions of this Division 6 shall prevail over any inconsistent provisions  
21 of a franchise agreement.

22 (h) The grantee under any franchise agreement is an independent contractor and not  
23 an officer, agent, servant, or employee of County. Grantee is solely responsible for  
24 the acts and omissions of its officers, agents, and employees, if any. Nothing in  
25 any franchise agreement shall be construed as creating a partnership or joint  
26 venture between County and grantee. Neither grantee nor its officers, agents, or  
27 employees, shall obtain any rights to retirement or other benefits which accrue to  
28 County employees.

**Section 46.0302 Franchise Fee**

- (a) Pursuant to Section 16.0222A of the San Bernardino County Code, Eexcept as set forth in Subdivision (b), below, each grantee under a franchise agreement shall pay to the County a franchise fee ~~equal to the then current and effective franchise fee~~ set forth in the individual franchise agreement for the specified area or in the County Schedule of Fees, currently found at Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code, whichever is greater. The payment of a franchise fee shall not limit the County's ability to establish and levy a business license tax, fees, charges, assessments, penalties, fines, and other requirements for monetary payment by the grantee to the County. Payment of franchise fee shall be made monthly. The franchise fee shall constitute a cost which grantee may recover as a part of the compensation due grantee under the franchise agreement.
- (b) In the event that a grantee under a franchise agreement in a uniform handling area offers a fee waiver program as set forth in section 46.0505 of this code, then such grantee will not be required to pay a franchise fee to the county in an amount proportionate to that waived pursuant to the Code.

SECTION 5. Title 4, Division 6, Chapter 4, Sections 46.0401 and 46.0402 are hereby amended to read:

**46.0401 Compensation.**

- (a) Charges for solid waste ~~facility fee~~handling services (including, without limit, for use of a solid waste facility) provided to grantee's subscribers shall be paid by such service subscribers in accordance with the total rate approved by the Board in its approval or extension of the franchise agreement with grantee, as such total rate is adjusted pursuant to § 46.0402.
- (b) All charges for services rendered by a given grantee shall be uniform and non-discriminatory for the type of service provided and reasonably based upon the type and/or number of containers, type of solid waste, whether compacted or loose,

1 number of separate pick-up points at any place of collection, placement of  
2 container(s) or distance of carry-out, frequency of collection, remote location,  
3 terrain, disposal costs, and whether residential, commercial, construction or  
4 industrial collection.

5 (c) (1) In cases where grantee includes a solid waste ~~facility fee~~handling services  
6 amount as a separate listing on a subscriber's bill, the County shall  
7 prescribe the amount consistent with waste generation factors established  
8 in the franchise agreement and the applicable solid waste ~~facility~~  
9 feehandling services.

10 (2) Grantee shall refund to each subscriber, on a pro rata basis, any advance  
11 service payments made by such subscriber for service not provided when  
12 service is discontinued by timely written notification to grantee by the  
13 subscriber. Grantee may not require written notice to be given more than  
14 15 working (waste collection) days prior to the date on which service is  
15 desired to be discontinued.

16 (3) On a quarterly basis, the County shall be allowed to furnish, for inclusion  
17 with grantee's billing, a message for the purpose of public education  
18 regarding waste disposal, recycling, or other environmental issues. If  
19 grantee mails its billing in an envelope, two of the four County messages  
20 may be in the form of a one page insert, provided the insert is: print ready  
21 copy which conforms to grantee's billing, is delivered to grantee by the  
22 Division 15 working (waste collection) days in advance of grantee's billing  
23 date and does not cause an increase in the postal rates payable by grantee  
24 for mailing its billing. If the message is not in the form of an insert, it shall  
25 be printed by grantee on its bills. Such message shall not exceed 25  
26 characters and shall be delivered to grantee by the Division 15 working  
27 (waste collection) days in advance of grantee's billing date. Grantee shall  
28 include such insert in, or print such message on, each subscriber's next



1 billing.

2 **46.0402 Adjustment to Total Rate.**

3 The following annual and special rate adjustments shall be made to the total rate  
4 provided for in a franchise agreement. However, no rate adjustment shall be implemented  
5 for or during any period of time when the affected grantee is not in substantial compliance  
6 with all material provisions of the County Code or the franchise agreement.

7 (a) Cost of Living Adjustment. A cost of living adjustment set forth in a franchise  
8 agreement should be based on appropriate consumer or product price indices and  
9 the adjustment shall be a pass through of 100 percent of any increase or decrease  
10 as a part of the total rate.

11 (b) Landfill Disposal Facility Fee. The landfill disposal facility fee adjustment shall be  
12 the pass through of 100 percent of any increase or decrease in the fee charged to  
13 the grantee for use of a landfill disposal facility approved for use by the Division,  
14 calculated on a per subscriber basis, and shall be effective as of the date of the  
15 change to such fee.

16 (c) Franchise Fee Adjustment. The franchise fee adjustment shall be the pass through  
17 of 100 percent of any increase or decrease in the franchise fee and shall be  
18 effective as of the date the franchise fee increase or decrease is payable by the  
19 grantee.

20 (d) Extraordinary Adjustment. The franchise agreement may allow for adjustments to  
21 the total rate to account for infrequent extraordinary events which, although they  
22 do not prevent either party from performing and do not implicate force majeure  
23 provisions, they nevertheless increase the cost of providing service such that  
24 grantee's compensation and the rate adjustment mechanism provided in the  
25 franchise agreement result in grantee's suffering losses which are substantially  
26 outside the commercially reasonable expectations of the parties. In no event shall  
27 any extraordinary adjustment be effective prior to the Board's approval of an  
28 amendment to the applicable franchise agreement.

1 (e) Change in Service Level Adjustments.

2 (1) The total rate shall be increased (or decreased) by 100 percent of the  
3 increase (or decrease) or incremental increase (or incremental decrease),  
4 as the case may be, in the demonstrable costs (i.e., on any direct or indirect  
5 cost, whether fixed or variable) associated with the change in the level of  
6 the solid waste ~~facility fee~~handling services which may be required of, or  
7 agreed to by, a grantee. A change in service level adjustment shall be  
8 effective on and after the actual date of the requirement to or agreement to  
9 change operations which results from the change in service, but, absent the  
10 consent of the division, not sooner than the effective date of the change in  
11 service. In no event shall any change in service level adjustment be  
12 effective prior to the Board's approval of an amendment to the applicable  
13 franchise agreement.

14 (2) In the event that the Division and the grantee claiming to be affected by the  
15 change in service level cannot agree on either the existence, or the effect  
16 on demonstrable costs, of a change in service level, the dispute resolution  
17 provisions of the franchise agreement shall apply.

18 (f) Change in Law Adjustments.

19 (1) The total rate shall be increased (or decreased) by 100 percent of the  
20 increase (or decrease) or incremental increase (or incremental decrease),  
21 as the case may be, in the demonstrable costs (i.e., on any direct or indirect  
22 cost, whether fixed or variable) associated with the change in the manner  
23 or nature of conducting solid waste ~~facility fee~~handling services  
24 necessitated by a change in law. A change in law adjustment shall be  
25 effective on and after the actual date of the change in operations which  
26 resulted from the change in law, but, absent the consent of the Division, not  
27 sooner than the effective date of the change in law. In no event shall any  
28 change in law adjustment be effective prior to the Board's approval of an

1 amendment to the applicable franchise agreement.

- 2 (2) In the event that the Division and the grantee claiming to be affected by the  
3 change in law cannot agree on either the existence, or the effect on  
4 demonstrable costs, of a change in law, the dispute resolution provisions of  
5 the franchise agreement shall apply.

6  
7 SECTION 5. Title 4, Division 6, Chapter 10, Sections 46.1001 and 46.1002 are  
8 amended to read as follows:

9 **46.1001 Administration, Enforcement and Remedies.**

- 10 (a) If the Director determines at any time that the grantee's performance of the solid  
11 waste ~~facility fee~~handling services authorized or required in its franchise  
12 agreement, or any of its other actions, are not in conformity with the provisions of  
13 the franchise agreement, the provisions of this Code, the requirements of the  
14 CalRecycle, or its successor agency, including but not limited to, requirements for  
15 source reduction and recycling (as to the waste stream subject to the franchise  
16 agreement) or any other applicable Federal, State, or local law or regulation,  
17 including but not limited to, the laws governing collection, transfer, storage and/or  
18 disposal of solid waste, the Director will notify grantee in writing of such  
19 deficiencies ("notice of deficiency") as shall be defined in the franchise agreement  
20 with the grantee.
- 21 (b) The notice of deficiency may provide a reasonable time within which correction of  
22 all noted deficiencies is to be made. Some deficiencies are by their nature not  
23 curable, and no time period to correct or remedy such deficiency shall be given in  
24 the notice of deficiency.
- 25 (c) The Director shall review the grantee's response to the notice of deficiency. If the  
26 Director determines that the grantee has not cured the deficiency, or if there is no  
27 cure period provided in the notice of deficiency given the nature of the deficiency,  
28 the Director shall either:

- 1 (1) Refer the matter directly to the Board for decision pursuant to Subdivision  
2 (d); or
- 3 (2) Decide the matter and notify the grantee of that decision, in writing.
- 4 (A) The decision of the Director may be to terminate the franchise  
5 agreement or may be to impose some lesser sanction;
- 6 (B) The decision of the Director shall be final and binding on grantee  
7 unless the grantee files a "notice of appeal" with the Director within  
8 30 days of receipt of the Director's decision. The notice of appeal  
9 shall be in writing, shall contain a detailed and precise statement of  
10 the basis for the appeal, and shall be accompanied by the fee, if any,  
11 which is applicable to the filing of such an appeal.
- 12 (C) Within ten working days of receipt of a notice of appeal, the Director  
13 shall either refer the appeal to the Board for proceedings in  
14 accordance with subdivision (d), or refer the matter to a hearing  
15 officer for proceedings pursuant to Chapter 27 of Division 2 of Title 1  
16 of this Code.
- 17 (d) (1) Should the Director refer the notice of deficiency to the Board in the first  
18 instance, or if the matter reaches the Board pursuant to a notice of appeal,  
19 the Board shall either:
- 20 (A) Refer the matter to a hearing officer for proceedings pursuant to  
21 Chapter 27 of Division 2 of Title 1 of this Code; or
- 22 (B) Set the matter for hearing.
- 23 (2) If the Board sets the matter for hearing:
- 24 (A) The Board shall give grantee, and any interested person requesting  
25 the same, 14 days written notice of the time and place of the public  
26 hearing. At the hearing, the Board shall consider the report of the  
27 Director indicating the deficiencies, and shall give the grantee, or its  
28 representatives and any other interested person, a reasonable

1 opportunity to be heard.

2 (B) Based on the evidence presented at the public hearing, the Board  
3 shall decide the appropriate action to be taken. If, based upon the  
4 record, the Board determines that as noted in the notice of  
5 deficiency, the grantee's performance of the solid waste ~~facility~~  
6 feehandling services authorized or required in its franchise  
7 agreement, or any of its other actions, are not in conformity with the  
8 provisions of the franchise agreement, the provisions of this Code,  
9 the requirements of the CalRecycle, or its successor agency,  
10 including but not limited to, requirements for source reduction and  
11 recycling (as to the waste stream subject to the franchise agreement)  
12 or any other applicable Federal, State, or local law or regulation,  
13 including but not limited to the laws governing collection, transfer,  
14 storage and/or disposal of solid waste, then the board, in the exercise  
15 of its sole discretion, may terminate the franchise agreement  
16 immediately or impose such lesser sanction as it deems appropriate.

17 The decision of the Board shall be final and conclusive.

18 (e) Grantee's performance under its franchise agreement is not excused during the  
19 period of time prior to the Director's or the Board's final determination, as the case  
20 may be, regarding the validity of, and appropriate response to, the deficiencies  
21 noted in the notice of deficiency.

22 (f) In the event grantee: (i) has received a notice of deficiency and fails to perform  
23 solid waste ~~facility~~ feehandling services; or (ii) has had its franchise agreement  
24 terminated; the County, acting through the Division, reserves the right, in addition  
25 to all other rights available to the County, to take any one or combination of the  
26 following actions:

27 (1) To rent or lease from grantee, at its respective fair and reasonable rental  
28 value, all or any part of the grantee's equipment (including collection

containers utilized by subscribers and office equipment and billing programs), equipment yard and office utilized by grantee in providing the solid waste ~~facility fee~~handling services required under its franchise agreement. The County may rent or lease such equipment and real property for a period not to exceed six months, for the purpose of performing the solid waste ~~facility fee~~handling services, or any part thereof, which grantee is (or was) obligated to provide pursuant to its franchise agreement. The County may use said rented equipment and real property to directly perform such solid waste handling service or to assign it to some other grantee or person to act on the County's behalf. Grantee shall be held responsible for the costs to insure the County or its assignee from all liability resulting from the operation of grantee's equipment. In the case of equipment or real property not owned by grantee, grantee shall assign to the County, to the extent grantee is permitted to do so under the instruments pursuant to which grantee possesses such equipment or real property, the right to possess the equipment or real property.

(2) As used in this Subdivision, means the rate for such equipment as listed in the State Department of Transportation publication, Labor Surcharge and Equipment Rental Rates, in effect at the time the County leases the equipment. If a particular piece of equipment is not listed in said publication or if said publication is not current, the reasonable rental value may be established by the Director by any equitable alternative method. For real property, the REASONABLE RENTAL VALUE means its market rental rate as established by the Director using an equitable method.

(3) If the County exercises its rights under this Subdivision, the County shall pay or owe grantee the reasonable rental value of the equipment and real property so used for the period of the County's possession thereof. The County may offset any amounts due to grantee pursuant to this provision

1                   against any amounts due to County from grantee.

2           (4)   All revenues owed by Subscribers which are attributable to services  
3                   performed by or at the direction of the County during County's assumption  
4                   of grantee's solid waste handling duties shall be billed by and paid to the  
5                   County. To the extent grantee receives such revenue after County's  
6                   assumption of grantee's solid waste handling duties, Grantee shall pay such  
7                   revenue to County promptly after receipt thereof (or promptly after County  
8                   has performed the services related to such revenue, if the revenue was  
9                   received by the grantee prior to the County's assumption of duties) and  
10                  grantee shall be deemed to have assigned to County all of grantee's right  
11                  and interest to any such revenues.

12   (g)   The County rights set forth in this Section are in addition to, and not in limitation  
13           of, any other powers or rights available to the County upon failure of grantee to  
14           perform its obligations under Division 6 or its franchise agreement. Further, by  
15           entering into its franchise agreement issued pursuant to Division 6 each grantee  
16           acknowledges that its violation of the terms of Division 6 or its breach of the terms  
17           of its franchise agreement shall cause the County to suffer irreparable injury and  
18           damages sufficient to support injunctive relief to enforce the provisions of the  
19           franchise agreement, and to enjoin the breach thereof.

20   (h)   This Section shall not apply to violations or deficiencies which fall within the sole  
21           jurisdiction of the County's Department of Public Health, Division of Environmental  
22           Health Services under Grantee's required Health and Safety Permit and which are  
23           not, and do not become, violations or deficiencies under Division 6.

24   **46.1002       Liquidated Damages.**

25   (a)   Each franchise agreement shall provide for a process to establish that grantee has  
26           met its service obligations under the franchise agreement and shall provide a  
27           schedule of liquidated damages for each violation or breach which has been  
28           verified to the satisfaction of the Division.

(b) A high level of collection service quality and subscriber satisfaction and therefore consistent and reliable service is of utmost importance to the County and the solid waste ~~facility fee~~handling services subscriber. County will have considered and relied on grantee's representations as to its quality of service commitment in approving any franchise agreement, and any violation or breach by grantee of its solid waste handling service obligations referenced in this Section represents a loss of bargain to the County. The grantee further acknowledges that quantified standards of performance are necessary and appropriate to ensure such consistent and reliable collection service, and if grantee fails to meet service obligations referenced in this Section, County will suffer damages (including but not limited to, its subscribers inconvenience; complaints by subscribers; lost Board and staff time; and loss of bargain) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. Therefore, the County and grantee acknowledge that the liquidated damages established by schedules to each franchise agreement, represent a reasonable estimate of the amount of such damages, considering all of the circumstances, including the relationship of the amount of the liquidated damages to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be extremely costly and inconvenient for both the grantee and County. By entering into its franchise agreement, the grantee will specifically affirm the accuracy of the statements made relating to liquidated damages and the fact that grantee will have had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provision contained therein.

(c) The rights of the County set forth in this Section are in addition to, and not a limitation on, any other rights which County may have against grantee for the failure to observe any condition or term of Division 6 or its franchise agreement, including the violations or breaches of same set forth in this Section for which liquidated damages are provided.



SECTION 6. Title 4, Division 6, Chapter 14, Sections 46.1402, 46.1403, and 46.1405 of the San Bernardino County Code is amended to read as follows:

**Section 46.1402~~3~~ De Minimis Waivers.**

The County may waive a commercial business' obligation (including multi-family dwellings with five or more units) to comply with some or all of the SB 1383 organic waste requirements of this Chapter if the commercial business provides documentation or the County has evidence demonstrating that the commercial business generates below a certain amount of organic waste material as described below in subsection (~~ba~~). Commercial businesses ~~requesting-granted~~ a de minimis waiver shall:

(a) Either provide documentation or confirm that the County has evidence demonstrating that:

(1) The commercial business' total solid waste collection service is two cubic yards or more per week and organic waste subject to collection in a blue container, green container, or brown container comprises less than 20 gallons per week per applicable container of the business' total waste; or

(2) The commercial business' total solid waste collection service is less than two cubic yards per week and organic waste subject to collection in a blue container, green container, or brown container comprise less than ten gallons per week per applicable container of the business' total waste.

(b) Notify the County if circumstances change such that the commercial business' organic waste exceeds the threshold required for a de minimis waiver, in which case the waiver will be rescinded.

~~—(c) Provide written verification of eligibility for a de minimis waiver every five years, if County has approved a de minimis waiver.~~

**Section 46.1403 Physical Space Waivers.**

The County may waive a commercial business' or property owner's obligations (including multi-family residential dwellings with five or more units) to comply with some

1 or all of the SB 1383 recyclables and/or organic waste collection service requirements if  
2 the County has evidence from its own staff, a hauler, licensed architect, or licensed  
3 engineer demonstrating that the premises lacks adequate space for the Collection  
4 containers required for compliance with the SB 1383 organic waste collection  
5 requirements of this Chapter. ~~(a) A commercial business or property owner may request~~

6 ~~a physical space waiver through the following process:~~

7 ~~— (1) Provide documentation that the premises lacks adequate space for blue~~  
8 ~~containers and/or green containers including documentation from its hauler, licensed~~  
9 ~~architect, or licensed engineer.~~

10 ~~— (2) Provide written verification to the County that it is still eligible for a physical space~~  
11 ~~waiver every five years if the County has approved an application for such waiver.~~

12 **Section 46.1405 Review and Approval Issuance of Waivers.**

13 The Director, or designee, shall have the authority to ~~review and approve~~issue all  
14 waivers.

15  
16 SECTION 7. The Board of Supervisors declares that it would have adopted this  
17 ordinance and each section, sentence, clause, phrase, or portion of it irrespective of the  
18 fact that any one or more sections, subsections, clauses, phrases or portions of it be  
19 declared invalid or unconstitutional. If for any reason any portion of this ordinance is  
20 declared invalid or unconstitutional, then all other provisions of it shall remain valid and  
21 enforceable.

22  
23 SECTION 8. This ordinance shall take effect thirty (30) days from the date of  
24 adoption.

25  
26  
27 \_\_\_\_\_  
DAWN ROWE, Chair  
28 Board of Supervisors

1 SIGNED AND CERTIFIED THAT A COPY  
2 OF THIS DOCUMENT HAS BEEN DELIVERED  
3 TO THE CHAIRMAN OF THE BOARD

4 LYNNA MONELL, Clerk of the  
5 Board of Supervisors

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1 STATE OF CALIFORNIA )  
2 ) ss.  
3 SAN BERNARDINO COUNTY )

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County,  
5 State of California, hereby certify that at a regular meeting of the Board of Supervisors of  
6 said County and State, held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at which meeting  
7 were present Supervisors: \_\_\_\_\_

8 and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to  
9 wit:

10 AYES: SUPERVISORS:

11 NOES: SUPERVISORS:

12 ABSENT: SUPERVISORS:

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal  
14 of the Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

15 LYNNA MONELL, Clerk of the  
16 Board of Supervisors of  
17 San Bernardino County,  
18 State of California

19 \_\_\_\_\_  
20 Deputy

21 Approved as to Form:

22 TOM BUNTON  
23 County Counsel

24 By: \_\_\_\_\_  
25 Jolena E. Grider  
26 Deputy County Counsel

27 Date: \_\_\_\_\_  
28