

ORDINANCE NO. 1666

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING
CHAPTER 8.28 ("HEALTH AND SAFETY – SOLID WASTE MANAGEMENT") OF
"THE CODE OF THE CITY OF SAN CLEMENTE, CALIFORNIA" TO INCORPORATE
NEW STATE MANDATES, CITY RULES AND REGULATIONS**

WHEREAS, AB 341 (Chesbro) was enacted by the California Legislature making it a policy goal of the State to divert 75 percent of solid waste away from landfills by 2020 through source reduction, recycling and composting; and

WHEREAS, AB 341 requires, among other things, that cities implement commercial waste recycling programs designed to divert commercial waste from businesses; and

WHEREAS, AB 341 further requires that a business that generates more than four cubic yards of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services, consistent with state or local laws or requirements; and

WHEREAS, AB 1826 (Chesbro) was enacted by the California Legislature requiring a business that generates more than four cubic yards of commercial solid waste per week, including multifamily residential, to arrange for recycling services specifically for organic waste; and

WHEREAS, the City hereby amends its commercial waste and recycling program to implement the requirements of AB 341 and AB 1826.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1: Chapter 8.28 of the Code of the City of San Clemente is hereby amended to read in its entirety as follows:

Chapter 8.28 - SOLID WASTE MANAGEMENT^[2]

8.28.005 - Purpose and Intent.

- A. The purpose and intent of this chapter is to regulate solid waste handling in order to protect public health, safety, and welfare and to meet the City's obligation under the California Integrated Waste Management Act of 1989 (Public Resources Code Sections §§40000 et seq) (hereinafter "AB 939").
- B. The City is obligated by AB 939 to implement plans for solid waste source reduction, reuse, and recycling to meet specified achievement milestones.

- C. Pursuant to the California Constitution, the City is authorized to enact ordinances to protect public health, safety, and welfare. Pursuant to Public Resources Code Section 40059, aspects of solid waste handling of local concern include, but are not limited to, the frequency of collection, means of collection and transportation, level of service, charges and fees, whether solid waste services are to be provided by means of non-exclusive, partially exclusive, or wholly exclusive franchise, contract, license or permit, and the terms and conditions of such franchise, license or permit.
- D. To enable the City to comply with AB 939 and to better control the solid waste handling services within the City, the City deems it necessary to grant one solid waste enterprise the right to provide exclusive solid waste handling services within the City as provided in this chapter.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.010 - Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"AB 939" means the California Integrated Waste Management Act of 1989, codified in part in Public Resources Code Section 40000 et seq., as amended, and as implemented by the regulations of the California Department of Resources Recycling and Recovery, or its successor.

"Bin" or "Bins" shall mean dumpsters, roll-off/drop-off boxes, compactors, and any similar such devices provided to any customer for residential, multifamily, and commercial solid waste handling services, for recurring or temporary bin/rolloff services; provided, however, the term "bins" does not include completely enclosed storage containers which are not used for solid waste handling services, but does include temporary roll-off/drop-off bins even if such bins are not used for solid waste handling services.

"Bulky items" shall mean that solid waste which cannot be and/or would not typically be accommodated within a container and include, without limitation, refrigerators or other appliances, furniture, machinery or pails thereof, mattresses, rugs, water heaters, 30 gallon trash bags and other items which, due to their size, are typically handled by a two or more person crew.

"Business" means a commercial entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or non-profit entity, or a multi-family residential dwelling.

"Container" or "containers" shall mean the containers, other than bins, distributed by a franchise hauler for the weekly collection of solid waste, including recyclable material, and which are designed for pick-up by an automated process (as opposed to a manual process) of lifting and dumping.

"Customer" shall mean any person or entity receiving solid waste handling services from a solid waste enterprise, including recyclable material collection services and/or temporary bin/rolloff services, within the city.

"Franchise hauler" shall mean any solid waste enterprise with which the City enters an exclusive or non-exclusive franchise agreement to provide solid waste handling services within the City.

"Organic waste" shall mean food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-spoiled paper waste that is mixed in with food waste.

"Recyclable materials" shall mean all garbage, trash, refuse, construction and demolition debris, and any other solid waste discarded within the City limits, which is capable of being recycled, whether generated from or at residential or commercial premises, or otherwise.

"Solid waste" shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, construction waste, demolition debris, industrial waste, green and organic waste, commercial solid waste, bulky items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which is included within the definition of "Nonhazardous Solid Waste" set forth in the California Code of Regulations, as amended.

"Solid waste enterprise" shall mean any individual, partnership, joint venture, unincorporated private organization, or private corporation regularly engaged in the business of providing solid waste handling services.

"Solid waste handling services" shall mean the collection, transportation, storage, transfer, disposal or processing of solid waste.

"Temporary bin/roll-off service" shall mean on call solid waste handling services provided on an as needed and temporary basis by use of temporarily placed bins, regardless of whether or not such bins are actually placed upon any street or property within the City or left attached to the vehicle used to transport such bins.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.020 - Required Use of Bins and Containers—Overflows Prohibited.

- A. Minimum Requirements. The City Manager, or designee, shall have the authority to establish, on a case by case basis, a minimum bin or container requirement for both refuse and recyclable material.
- B. Placement of Solid Waste. Unlawful depositing of solid waste on public or private property. Every customer receiving solid waste handling services within the City shall place all solid waste intended for collection in containers or bins supplied for that purpose by the City or the franchise hauler.

It shall be unlawful to place, deposit, abandon, or dump, or caused to be placed, deposited, abandoned or dumped, any solid waste, or other waste material not meeting the definition of solid waste, in or up on any public highway, road or alley, including any portion of the right-of-way thereof, or upon any public beach, public park, the City pier, or any other public property owned, operated or maintained by the City, or upon any private property in the City except: (i) in a bin or container, for the purpose of being collected and disposed by the City or the franchise hauler, in accordance with the provisions of this Code; or (ii) in a private receptacle, in cases where a person or entity is appropriately providing for its own solid waste collection and disposal without the use of a solid waste enterprise.

- C. Overflows Prohibited. No customer shall cause or permit any container or bin to be overfilled. For purposes of this section, overfilled shall mean filled or loaded in such a manner so as to prohibit the lid of the container or bin from closing completely. Every customer shall be responsible for placing solid waste, including recyclable materials, in the appropriate container(s) or bin(s) and placing the container(s) or bin(s) at the location required under Section 8.28.040 of this chapter for collection. No customer shall cause or allow solid waste, including recyclable materials, to be stored for collection in any location other than inside a completely closed container or bin.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.021 - Exception—Bulky Items.

Notwithstanding Section 8.28.020.B, bulky items need not be kept, stored, or placed for collection in containers or bins.

In addition to the foregoing, it shall be unlawful for any owner, tenant, or occupant of property within the City to allow any bulky items to be placed, deposited, abandoned, dumped, or maintained on any public or private street, alley, sidewalk, or right-of-way adjacent to said person's property or on any portion of said person's property that is visible from any public or private street, alley, sidewalk, or right-of-way, excepting only that it shall be permissible to place or deposit said bulky items for a scheduled collection in the locations and at the times authorized pursuant to Section 8.28.040.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.040 - Containers—Placement for Collection—Restrictions on Storage; Penalty for Violations.

Customers shall place containers and all bulky items for which a scheduled collection has been arranged adjacent to the curb along the street in front of their premises or, if no curb exists, either adjacent to the main traveled portion of the street fronting their premises or in the alley in the rear of the property. Notwithstanding the above, any customer receiving solid waste handling services at a premises having a rear exit onto an alley which has access to streets at each end thereof, shall place containers and all bulky items for which a scheduled collection has been arranged in such alleys. All containers used by and/or for a customer and all bulky items placed in connection with a scheduled collection shall be grouped together when placed in the appropriate collection location and shall be placed out for collection no earlier than 5:00 p.m. of the day prior to the day fixed for collection. Within 24 hours after collection has been made, all containers and any uncollected solid waste (including bulky items) shall be removed by each customer (or, as to bulky items, the owner, tenant, or occupant of the property) from the place of pick up and placed upon the customers property so containers are substantially hidden from view from any public street or alley. "Substantially hidden" means that each container or bin must at minimum be placed behind a permanent wall, fence or similar structure that is not less than the height of the bin or container.

At the City's discretion, the first violation of any provision of Sections 8.28.040 and 8.28.020—8.28.052 of this Chapter 8.28 may be addressed by placement (by the City or its agent) of a written warning sticker on the container or bulky item, as applicable, and/or by mailing a written warning notice to the property owner (as identified on the County Assessor's records) informing the customer, property owner, tenant, or occupant, as applicable, of the nature of the violation and of said person's responsibility to ensure that his or her property (and, if applicable, the adjacent public or private street, alley, sidewalk, and right-of-way) is maintained in a manner consistent with this chapter, and of the penalty for failing to do so in the future; provided, however, that the City may elect to prosecute violations of this chapter without first issuing such a warning notice. Every violation of Sections 8.28.040 and 8.28.020-8.28.052 of this Chapter 8.28 shall result in the issuance of a citation to the customer and/or to the property owner, tenant, or occupant, as applicable. The first citable offense shall be punishable by a fine not to exceed one hundred dollars (\$100.00); the second citable offense, if committed within six months of the first offense, shall be punishable by a fine not to exceed two hundred dollars (\$200.00); and all additional offenses committed within six months of any previous offense shall be punishable by a fine not to exceed five hundred dollars (\$500.00).

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.041 - Exemptions from Container Storage Requirements.

Any customer or property owner who believes he or she cannot reasonably satisfy the post-collection container placement requirements contained in the preceding Section 8.28.040 may request an exemption from the Utilities Director, or designee, by submitting to the Utilities Director a written request specifying the reasons he or she believes an exemption from the post-collection placement requirements is necessary. Upon review of the request, the Utilities Director may grant the exemption if he or she determines that, due to factors including, but not limited to, the existing physical layout of the applicant's property or the property's topography, it is physically impossible to satisfy the above post-collection container placement requirements or that to do so would cost in excess of one thousand dollars (\$1,000.00).

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.050 - Arrangements for Solid Waste Collection and Disposal.

- A. The owner, occupant or person in control of every premises in the City shall cause solid waste generated or accumulated on such premises to be collected and lawfully disposed by the City or the franchise hauler or by his or her own efforts.
- B. A business that generates more than four cubic yards of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services.
- C. A business that generates more than four cubic yards of commercial solid waste per week, or upon a determination by the California Department of Resources Recycling and Recovery that such amount shall be reduced to two cubic yards per week, shall arrange for recycling services specifically for organic waste.

- D. Transfer of solid waste from premises to premises is not allowed except when the same person manages at least one valid trash service account between which solid waste will be transferred. Any person found in violation may be required to pay for trash service at all premises for which person is associated.
- E. Rate Structure. The rates charged by the exclusive franchise hauler for the solid waste handling services shall be as set forth in the schedule of rates and charges which shall be mutually agreed upon by the City and the exclusive franchise hauler in the exclusive solid waste handling services contract.
- F. Rate Increases. Annual rate increases may be granted as set forth in the exclusive solid waste handling services contract between the City and the exclusive franchise hauler. In the event of an annual increase, the City's Solid Waste Coordinator shall annually publish a revised schedule of rates and charges for solid waste handling services.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.051 - Unauthorized Bins and Containers.

No person other than the City or the franchise hauler shall deposit, place, or leave standing a bin or container on any property or street within the City for the purpose of providing solid waste handling services, regardless of whether or not such bins are actually placed upon any street or property within the City or left attached to the vehicle used to transport such bins, except as follows:

- A. The collection, transportation, recycling, and disposal of any solid waste which is transported to an appropriate disposal facility by an occupant of the premises upon which the solid waste was generated (but not including any agent, representative or contractor of such occupant).
- B. The collection, transportation, recycling, and disposal of any waste material which is transported to an appropriate disposal facility by an officer or full time permanent employee of the commercial, construction or industrial enterprise that generated the waste (but not including any independent contractor, non-employee agent or representative, or other contractor of such enterprise).
- C. The sale or donation of source separated recyclable material by the person or entity that generated such recyclable material (the "Generator") to any person or entity other than the City or the franchise hauler, provided that to the extent permitted by law, if the Generator is required to pay monetary consideration for the collection, transportation, transfer, processing of recyclable material, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation.
- D. The collection, transportation or disposal of clippings, cuttings, yard waste and related solid waste by a gardener, or landscaper, as part of the gardening or landscaping services provided to its customers, provided that such waste is taken to a legal place of composting, diversion or disposal and was generated in the course of providing the above-noted services.
- E. Use of special water-tight bins specifically designed for concrete wash out, providing such bins are used only for actual concrete wash out and not to collect or transport broken up dried concrete or other debris or solid waste.
- F. Non-Profit Charities. Non-profit charities registered with the attorney general of the state periodically accepting donations of recyclables may transport the recyclables, provided that the charity transport the recyclables to a recycling facility and that charity volunteers and employees comply with the provisions of this chapter and with any other governing laws.
- G. For transport only, any person may haul solid waste generated and collected in other jurisdictions over City streets provided they comply with the provisions of this chapter and with any other governing laws, and provided further that they do not engage in any solid waste handling services within the City.
- H. Document Destruction Companies. Companies whose primary purpose is the destruction of documents/records that, incidental to this purpose, collect paper and deliver such paper, after shredding/destruction, to a recycling facility, are not required to obtain a solid waste and recycling permit to transfer and recycle this material.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.052 - Enforcement Authority, Impounding of Solid Waste Containers; Remedies.

- A. Authority. The City Manager, or designee, shall have the authority to enforce the provisions of this chapter. This authority shall be in addition to the authority granted to police officers pursuant to the Code.
- B. Impounding of containers. If a solid waste container is not properly identified as belonging to a City-approved solid waste collector, or if the terms of the permit, the franchise agreement, or of this chapter are not complied with, then the solid waste container may be subject to removal and impound by order of the City Manager, or designee, pursuant to Section 8.28.053.
- C. Administrative remedies. Notwithstanding other enforcement options provided by the Code, any person who violates this chapter shall be subject to an Administrative Citation per Chapters 1.20 and 1.22 of the City Code.
- D. Civil remedies. Nothing in this chapter shall be deemed to limit the right of a City franchisee or the City to bring a civil action against any person who violates this chapter, nor shall a conviction for such violation exempt any person from a civil action brought by a City franchisee or the City.
- E. Responsible parties subject to compliance with this chapter, and enforcement remedies herein, include persons providing illegal containers, persons who have contracted for illegal containers, and owners of property in which the illegal container is intended to serve.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.053 - Removal of Unauthorized Bins and Containers on Public Property.

The Utilities Director, or designee, or the franchise hauler acting as the agent of the City, may cause the posting of a notice to remove in a conspicuous place on any bin or container deposited, placed or left on any public property within the City in violation of this chapter. Any such notice shall specify the nature of the violation, and shall state that the bin or container must be removed within 24 hours or it may be removed and stored by the City or the franchise hauler, and the contents disposed of, at the expense of the owner. The posting of a notice to remove shall constitute constructive notice to the owner and the user of the requirement to remove the container.

Subject to the following paragraph, if the container is not removed within 24 hours after the notice to remove is posted, the Utilities Director may remove or direct the franchise hauler to remove and store the bin or container and dispose of its contents. The owner of the bin or container shall be responsible to reimburse the City or the franchise hauler (as applicable) for the actual cost of the removal, storage, and disposal, and all amounts due shall be paid before the bin or container may be returned to the owner. Such amounts shall constitute a debt owed by the owner to the City or the franchise hauler (as applicable) and the owner shall be liable to the City or the franchise hauler in an action brought by the City and/or the franchise hauler for the recovery of such amounts.

If the identity of the owner of a bin or container that has been removed pursuant to this section is known to the City or the franchise hauler, the City or the franchise hauler shall promptly cause notice to be mailed to the owner to claim the stored property. If the bin or container is not claimed within 45 days after removal and notice to the owner, or 30 days after removal if the identity of the owner is unknown to the City or the franchise hauler, the bin or container shall be deemed abandoned property and may be disposed of accordingly.

After a bin or container has once been removed by the City or the franchise hauler pursuant to a notice to remove posted in accordance with this section, the owner thereof shall be deemed to have actual notice of the provisions of this chapter, including the prohibition against the deposit, placement, or leaving of unauthorized bins or containers on property in the City. In the event of a subsequent deposit, placement or leaving of a bin or container owned by the same owners, or an affiliate of the owner, on public property within the City, the Utilities Director may immediately, without posting of a notice to remove, remove or direct the franchise hauler to remove and store the unlawfully placed bin or container without the

requirement that a notice be posted on the bin or container. All other portions of this section shall continue to apply.

Notwithstanding any other provisions of this chapter to the contrary, the Utilities Director is authorized to direct the immediate removal by the City or the franchise hauler, without notice, of any bin or container placed on public property within the City in violation of this chapter where the owner of the bin or container is unidentified and cannot be ascertained by an inspection of the bin or container.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.060 - Permissible Collection Hours.

It shall be unlawful to provide solid waste handling services in areas of the City zoned for residential use between the hours of 7:00 p.m. to 7:00 a.m. It shall be unlawful to provide solid waste handling services in areas of the City zoned for other than residential use between the hours of 7:00 p.m. to 6:00 a.m.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.070 - Construction of Enclosures.

As a condition for the issuance of building permits and certificates of occupancy for the construction of any new residential or commercial structures, except for single-family residences, the applicant shall be required to construct a paved trash enclosure. Said enclosure shall be large enough to house the containers and bins required for use by customers subject to this chapter. The trash enclosure shall conform to all height and setback requirements of the zoning district in which it is located and shall be subject to approval of the Building and Planning Department as to its location and design. The purpose of this enclosure shall be to screen containers or bins from public view between collection dates. Once constructed, trash enclosures shall be used and maintained in good condition.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.080 - Burning of Garbage, Fertilizer, etc.

No person shall burn, nor allow to be burned, fertilizer, solid waste, or other waste material not meeting the definition of solid waste, in the City.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.100 - Building Contractors to Leave Areas Clean.

All owners, contractors and other builders of structures shall, upon the completion of any such structure, gather up and haul away, either through their own efforts or through the use of a solid waste enterprise lawfully operating within the City, at their sole cost and expense, all solid waste of every nature, description or kind, which has resulted from the building of such structure, including all scraps of lumber, shingles, plaster, brick, stone, concrete and other building material, and shall place the lot and all nearby premises utilized in such construction in a slightly condition. During the course of construction, all solid waste accumulated or generated on the site shall be placed, kept and stored for collection and disposal in containers, bins or private receptacles on the construction site. All adjacent streets and properties shall be kept free of trash from the job site at all times.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.110 - Accumulation of Garbage, etc., Declared Nuisance.

The accumulation of solid waste by any person beyond the period of one week or in any manner other than as specified in this article and Chapter 8.76 of this Code is declared to be a nuisance pursuant to Government Code Section 38771. The City Council, pursuant to Government Code Section 38773 shall, by separate ordinance, provide for the summary abatement of such nuisances.

(Ord. No. 1642 , § 1, 7-18-2017)

8.28.120 - Unsanitary Conditions; Duty to Remove and Abate Unsanitary, Unhealthful Substances.

The owner, occupant and/or person in control of every premises in the City shall maintain covers on all containers, bins, or private receptacles utilized to collect or store solid waste on their premises, to keep the same in a sanitary, healthful condition and to keep the area directly around the container, bins or private receptacles in a clean, and sanitary manner. In the event containers, bins, receptacles or the collection area of any premises are determined to be in an unhealthful, or unsanitary condition by the Utilities Director, a notice to clean in accordance with Chapter 8.76 of this Code shall be issued to the owner, occupant or person in control of the premises.

(Ord. No. 1642 , § 1, 7-18-2017) 8.28.130 - Violations as Infraction.

Notwithstanding, and not as a means of limiting, any other remedies available to the City and/or the franchise hauler pursuant to this chapter, any violation of this chapter shall be deemed to be an infraction and is punishable as such according to provisions of this code and state law.

(Ord. No. 1642 , § 1, 7-18-2017)

Section 2: The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this ____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY