



Council Meeting: August 23, 2011

SUBJECT: Update to Enforcement Provisions of Chapter 8.16 of Sunnyvale Municipal Code (Solid Waste Management and Recycling)

REPORT IN BRIEF

Staff is proposing that Council adopt updates to Municipal Code Chapter 8.16, "Solid Waste Management and Recycling." The ordinance (Attachment A) proposes additions and changes that allow more effective enforcement of existing City requirements regarding the City's exclusive franchise for hauling solid waste. Other changes would establish a fee for uncovered loads to encourage SMaRT Station® users to cover their loads. Staff is recommending that Council adopt the attached ordinance updating Chapter 8.16 of the Municipal Code. Staff is also recommending Council pass a resolution to establish a fee for uncovered loads.

BACKGROUND

Revisions to Chapter 8.16 are needed to bring the ordinance current with local and state regulations on littering and to improve enforcement of existing provisions regarding illegal placement and use of debris boxes and other waste collection receptacles.

Staff observations have identified the following areas of concern:

- Independent haulers of recyclables in Sunnyvale are frequently found to be actually hauling solid waste without the required franchise or license from the City. This reduces revenues to both the General Fund and Refuse Fund, and puts upward pressure on rates for customers who comply with the Municipal Code. An important element of enforcement is City confiscation of receptacles placed for illegal collection of solid waste. Violators are presently notified and given five days to remove a receptacle before the City removes it. In many cases this long lead time makes enforcement ineffective, as the hauler completes its illegal business transaction and removes the receptacle before the end of the notice period.
- Vehicles using the SMaRT Station for self-haul disposal are required by State law [State Vehicle Code 23114 (a)] to cover their loads, but in a recent survey at the scale house, 75 percent of the loads were uncovered. In addition, the City is required under provisions C.10 and C.10.c of its National Pollution Discharge Elimination System Stormwater Permit to

demonstrate a 40% reduction in the amount of trash coming from potential sources by 2014. Progress has been made, but additional reductions are required in subsequent years to meet that goal. One of the sources of pollution is uncovered loads transported by the public.

These sections have been difficult to enforce as the consequences written in for violators are impractical to assess.

EXISTING POLICY

Solid Waste Sub-Element, Policy 3.2

A.1a. Establish, enforce and periodically update collection service standards.

Surface Runoff Sub-Element, Policy 3.4

A.2b. Implement appropriate pollution prevention activities for targeted pollutants to comply with regulatory requirements.

DISCUSSION

Solid Waste Sub-Element, Goal 3.2.A is to ensure that all municipal solid waste generated within the city is collected and transported in a manner that protects public health and safety. The following proposed changes to the language are designed to assist the division in meeting this goal:

Section 8.16.180 Impounding of receptacles

- Upon discovery of an illegally placed receptacle, a notice will be placed on the receptacle and the receptacle can be impounded after 24 hours (or after six hours if notified by telephone). This will shorten the time frame for impounding the receptacle from five days to between six and 24 hours depending on type of notification.
- The City may impose fees, charges or penalties resulting from the cost to impound the receptacle, unless within 10 working days of notification a hearing is requested by person/s that placed the receptacle. Fees, charges or penalties will not be applied if the person that placed the receptacle prevails in the hearing.
- The owner of a receptacle that has been given notice of impoundment may request an administrative hearing within 10 working days of the notice and the hearing will be scheduled within three working days after the request. This process provides the receptacle owner adequate time to request a hearing and the City time to prepare. Currently the receptacle owner is given three days to request a hearing.

Section 8.16.190 Vehicles, conveyances and containers

- The driver of an uncovered, open bed truck or trailer delivering material to the SMaRT Station would pay a fee of \$15.00 and receive a tarpaulin (tarp) for future use. Currently there is no fee or tarp provided for uncovered loads, nor systematic enforcement of this State Vehicle Code provision. As a result, material from uncovered loads can blow from trucks and cause litter to deposit on streets, into creeks and waterways and around the SMaRT Station, where substantial resources are spent for the clean-up. Any material that does not get cleaned up may find its way to the Bay as a pollutant.

These changes to Chapter 8.16 will help the City improve upon its already clean image by better aligning the Municipal Code with current solid waste practices and issues, and strengthening penalties for violation of the Code. As part of the process, staff found that the proposed changes are exempt from the requirements of the California Environmental Quality Act (CEQA) in that this is not a project which has the potential for causing a significant effect on the environment.

FISCAL IMPACT

Modifying Enforcement Timeline:

An unknown amount of solid waste collection revenue and SMaRT Station host fees are lost to unfranchised haulers operating in Sunnyvale. It is estimated that if 80% of the material currently being hauled by others returns to SMaRT, the \$3.75 host fee charge per ton could amount to \$48,000 annually to the City's General Fund. Furthermore, channeling material and associated data through the SMaRT Station will assist the City in complying with the anticipated AB 32 requirements for reports on mandatory commercial recycling in the context of climate change. To the extent that these changes in enforcement return revenues to the General and Solid Waste Funds, there is less upward pressure on the collection rates for customers of the City's solid waste utility.

Tarping:

The goal of the \$15 fee is to provide an incentive to haulers to do the right thing and cover their loads. It is estimated that the costs to administer the fee (which includes the cost to purchase tarps and the staff time to explain the requirement to haulers), will be reduced quickly as drivers become familiar with the tarping requirement. The first month's costs could be as high as \$12,000 if 75% of the self-hauled loads arrive uncovered. However, as repeat users of the facility tarp their load the next visit, the revenue collected will decrease as the subsequent untarped loads decrease over time. The City of Palo

Alto implemented a similar program in July 2009 and after nine months had a 95% compliance rate.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

Additionally, haulers known to be operating in the area will be notified by writing of the changes to enforcement timelines.

A flyer is currently being distributed at the SMaRT Station scale house to drivers of incoming open bed vehicles reminding them of the existing covered load requirement. If the ordinance is approved, a flyer notifying drivers of the fee on uncovered loads will be distributed three months prior to implementation to discourage drivers from arriving without their load covered.

ALTERNATIVES

1. Adopt the attached ordinance updating Chapter 8.16 of the Municipal Code.
2. Adopt a resolution to establish a fee for uncovered loads at the SMaRT Station.
3. Make no changes to the Municipal Code and do not adopt a resolution establishing a fee for uncovered loads at the SMaRT Station.
4. Other action as determined by Council.

RECOMMENDATION

Staff recommends Alternatives Nos. 1 and 2: Adopt the attached ordinance updating Chapter 8.16 of the Municipal Code and adopt a resolution to establish a fee for uncovered loads at the SMaRT Station.

Reviewed by:

John Stufflebean, Director, Department of Utilities
Prepared by: Karen Gissibl, Recycling Manager

Approved by:

Gary Luebbers
City Manager

Attachments

- A. Solid Waste Ordinance
- B. Fee Schedule Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING SECTION 8.16.180 OF CHAPTER 8.16 (SOLID WASTE MANAGEMENT AND RECYLING) OF TITLE 8 (HEALTH AND SAFETY) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO IMPOUNDING REFUSE CONTAINERS AND REQUIREMENTS FOR TARPING OPEN BED TRUCKS

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 8.16 AMENDED. Chapter 8.16 (Solid Waste Management and Recycling) of Title 8 (Health and Sanitation) of the Sunnyvale Municipal Code is hereby amended to read as follows:

8.16.020. Definitions.

(j) “Receptacle” shall mean every type of container used in connection with collection and removal of solid waste and/or recycling materials, including compactors, bins and boxes, used in every zoning district of the city, which is not provided by the city or by a city licensed disposal service operator. [Re-alphabetize existing definitions to insert this definition.]

8.16.030. Solid waste container requirements.

(a) – (c) [Text unchanged.]

(d) All containers ~~of seven or more cubic yards capacity~~ shall be clearly identified with the name and telephone number of the disposal service operator servicing it.

8.16.170. Collecting or hauling without franchise or license unlawful

(a) [Text unchanged.]

(b) It is unlawful for the occupant of a premises to engage the services of a person ~~or entity~~ for collecting solid waste within the city unless such person ~~or entity~~ has been granted a franchise or license to do so by the city.

8.16.180. Impounding of receptacles ~~containers~~ placed in violation of chapter.

(a) Any person who violates Section 8.16.170(a) shall be notified in writing that the prompt and permanent removal is required of any receptacle bin, box, or container placed on the premises for collection by a person who is not a city licensed disposal service operator. Written notice shall be posted prominently upon the receptacle bin, box, or container. If the receptacle bin, box, or container is identified with the name and address or telephone number of the person operating solid waste enterprise servicing it, notice shall be provided by mail or telephone. ~~to the extent it is possible to do so.~~ Failure to notify any person by phone or by mail shall not invalidate the notice.

(b) The notice shall inform the person who places or operates ~~owner of~~ the receptacle bin, box, or container that the city intends to impound any receptacle

~~storage container~~ which is placed in violation of Section 8.16.170 within the time set forth in the notice, which shall not be less than 24 hours after posting of the notice, or not less than 6 hours after telephonic notification. five city working days, and to

(c) The city may impose fees, costs, charges, and penalties in the amount set forth by city council resolution, unless, within ~~threeten~~ city working days from the date of notice, ~~the owner of the container~~person who places or operates the receptacle has requested a hearing on removal and impoundment by filing a written request for a hearing with the department of public works, attention solid waste manager. A hearing on impoundment shall be scheduled within three city working days after request.

~~(e) In the event no hearing is requested, or in the event after a hearing the hearing officer determines the city has a right to impound the container, the city may impound or cause to be impounded any container if the same is not permanently removed from the place or premises within twenty four hours of the date set forth in the notice if no hearing was requested, or within twenty four hours of notice of the hearing officer's determination of the city's right to impound.~~

(d) Any person who violates this section ~~and who fails to remove such container~~ shall be liable to the city for all penalties. That person or persons shall also be liable for any fees, costs and charges in connection with impounding, the collection, transportation, storage and handling of such ~~bin, box, or container~~ receptacle by the city, as well as cost recovery pursuant to the applicable Utility Fee Schedule in effect on the date of hearing. The ~~bin, box or container receptacle~~ impounded by the city shall be retrieved by the owner ~~or owner's representative~~ immediately upon proof of ownership of the receptacle after all applicable fees, penalties, costs and charges have been paid. Fees, penalties, costs and charges shall not apply if any person prevails in any hearing adjudicating the matter. In all cases, a receptacle storage container not retrieved after three months shall be deemed abandoned.

(e) Upon posting of a written notice of violation upon the unauthorized ~~bin, box, or container receptacle, the customer no person~~ using the unauthorized receptacle bin, box, or container shall immediately cease placing place solid waste and recyclable materials therein, or that person will be subject to fees, penalties, costs and charges in the amount set forth in city council resolution.

8.16.200. General penalties and Administrative penalties.

Failure to comply with the provisions of this chapter shall make the person violating its provisions subject to general penalties in accordance with Chapter ~~1.05~~ 1.04 and also subject to administrative citations in accordance with Chapter ~~1.06~~ 1.05 of this code.

SECTION 2. SECTION 8.16.190 AMENDED. Section 8.16.190 of Chapter 8.16 (Solid Waste Management and Recycling) of Title 8 (Health and Sanitation) of the Sunnyvale Municipal Code is hereby amended to read as follows:

8.16.190. Vehicles, conveyances and containers—Applicable regulations.

(a) All vehicles, conveyances or containers used for hauling solid waste within the city shall be of such construction as to comply fully with all laws, rules and regulations of the state of California pertaining thereto, and shall be of a type and construction to prevent leakage, spillage or overflow. This ordinance is intended to implement the requirements of Vehicle Code section 23114, or its successor statute.

(b) Any operator of an uncovered open bed truck hauling waste and recyclables for disposal at the SMaRT station shall be subject to payment of a fee for which the operator shall receive a tarp to be used for covering debris and solid waste. The fee for the truck tarp shall be established from time to time by resolution of the city council.

SECTION 3. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2011, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

RESOLUTION NO. ____-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ESTABLISHING AN ADMINISTRATIVE FEE PURSUANT TO SECTION 8.16.190 AND 8.16.200 TO BE INCLUDED WITH THE CITY'S MASTER FEE SCHEDULE OF THE SUNNYVALE MUNICIPAL CODE

WHEREAS, Chapter 8.16 of the Sunnyvale Municipal Code was amended to strengthen enforcement authority to prohibit illegal debris receptacles within the city and to require that any vehicle, conveyance or container used to haul solid waste shall be covered to prevent dropping or spilling of debris in conformity with statewide requirements, and

WHEREAS, Section 8.16.200, as amended, establishes that enforcement authority for illegal debris containers shall include Administrative Citations for which the Administrative Citation Fine Schedule is imposed (Section 7.12 of Master Fee Schedule, as amended from time to time a fee) and cost recovery pursuant to the Utility Fee Schedule, shall be charged pursuant to the City's adopted Master Fee Schedule; and

WHEREAS, Section 8.16.190, as amended, provides that vehicles, conveyances and containers hauling solid waste shall be covered, and if uncovered, shall pay a fee for a tarp to be used for this purpose, which new fee shall be added to the Master Fee Schedule as set forth in Exhibit "A" attached hereto, and

WHEREAS, the City of Sunnyvale adopted Resolution 486-11, the Master Fee Schedule, on June 28, 2011; and

WHEREAS, it is intended that the fee established by this Resolution shall be added to the Master Fee Schedule effective immediately and to be included in succeeding years until rescinded or amended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The administrative fee as set forth in Exhibit "A" attached hereto is hereby adopted.
2. This fee is intended to be added to the Master Fee Schedule of fees and penalties established by Resolution 486-11.

Adopted by the City Council at a regular meeting held on _____, 2011, by the following vote:

AYES:
NOES:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

CHAPTER 1.05
ADMINISTRATIVE CITATION SCHEDULE OF FINES

SMC PROVISION	FEE*
All violations of the Sunnyvale Municipal Code enforced pursuant to Chapter 8.16.190 are governed by this schedule of fees	Fee shall be assessed as follows: (1) \$15.00 for purchase of a tarp to cover untarped vehicles, conveyances and containers hauling solid waste.
* All fees are payable due within thirty (30) days of the citation date. A late fee of 10%/month simple interest will be assessed for all payments received after the due date.	