CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **Environmental Services**

AGENDA DATE: **December 14, 2010 Introduction; December 21, 2010 Public Hearing**

CONTACT PERSON/PHONE: **Ellen A. Smyth, P.E., (915) 621-6719**

DISTRICT (S) AFFECTED: **All Districts**

SUBJECT: ORDINANCE

An Ordinance amending Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), to clarify terms and definitions; to remove the notice requirement for overflowing carts in Section 9.04.100 (Location for Collection); to require monthly commercial collection in Section 9.04.190 (Schedule for Collection); to clarify construction or demolition material placement in Section 9.04.260 (Accumulation and Storage); to clarify the manifest process in Section 9.04.280 (Manifest Requirement); to clarify roll-off collection in Section 9.04.300 (Schedule for Collection); to clarify hauler permit revocation in Section 9.04.480 (Suspension, Revocation of Hauler Permit; Appeals); to cap the sign and litter receptacle requirement in Section 9.04.910 (Litter Control); and to amend the effective date of the Franchise Agreement requirements; the penalty being as provided in Section 9.04.630 of the El Paso City Code

BACKGROUND / DISCUSSION:

The Environmental Services Department is requesting amendments to Title 9.04 to clarify various items related to solid waste management including overflowing carts, construction or demolition waste placement, clarification of the manifest process, clarification of the hauler permit revocation, the establishment and charging of fees, to cap sign and litter receptacle, and other related issues for solid waste. Major revisions to Title 9.04 were approved by Council on August 24, 2010, and these current revisions are needed to provide further clarification.

PRIOR COUNCIL ACTION:

August 24, 2010

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION:

N/A

*********************REQUIRED AUTHORIZATION**********************

LEGAL: (if required) Josette Flores **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.04 (SOLID WASTE MANAGEMENT), TO CLARIFY TERMS AND DEFINITIONS; TO CLARIFY OVERFLOWING CARTS IN SECTION 9.04.100 (LOCATION FOR COLLECTION); TO PROVIDE AN EXEMPTION FOR COMMERCIAL COLLECTION OF COMPACTED SOLID WASTE IN SECTION 9.04.190 (SCHEDULE FOR COLLECTION); TO CLARIFY CONSTRUCTION OR DEMOLITION MATERIAL PLACEMENT IN SECTION 9.04.260 (ACCUMULATION AND STORAGE); TO CLARIFY THE MANIFEST PROCESS IN SECTION 9.04.280 (MANIFEST REQUIREMENT); TO CLARIFY ROLL-OFF COLLECTION IN SECTION 9.04.300 (SCHEDULE FOR COLLECTION); TO CLARIFY HAULER PERMIT REVOCATION IN SECTION 9.04.480 (SUSPENSION, REVOCATION OF HAULER PERMIT; APPEALS); TO CAP THE SIGN AND LITTER RECEPTACLE REQUIREMENT IN SECTION 9.04.910 (LITTER CONTROL); AND TO AMEND THE EFFECTIVE DATE OF THE FRANCHISE AGREEMENT REQUIREMENTS; THE PENALTY BEING AS PROVIDED IN SECTION 9.04.630 OF THE EL PASO CITY CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management) references to the term Construction or Demolition Waste shall be substituted with the term Construction or Demolition Material.

Section 2. That the following definitions in Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.020 (Definitions) be amended to read as follows:

9.04.020 Definitions.

9. **"Construction or Demolition Material"** means material resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction or work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, plastic buckets and drums, gypsum board, wood, rebar, aluminum or vinyl siding, excelsior, rubber, plastics, concrete, asphalt, corrugated cardboard, roofing tiles, asphalt shingles, tar paper, and floor tiles.

10. **"Construction or Demolition Material Manifest"** means a form offered for sale by the Department to Permitted Haulers and Self-transporters for the purpose of tracking the transportation of Construction or Demolition Material from its point of generation to the location of delivery for disposal or recycling of said material.

56. "**Retail or Service Establishment**" means a business operation located on an Improved Property that has as its primary purpose the selling of goods, merchandise and/or providing services to members of the public from a fixed location, such as a shop, store or building complex. Examples of Retail or Service Establishments include, but are not limited to restaurants and bars, gas stations, convenience stores, and shopping centers.

Section 3. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.100 (Location for Collection), Subsection A. 4 be amended to read as follows:

9.04.100 A. Requirements and Location of Collection at Residential Properties

4. Municipal Solid Waste shall be contained in secured, odor, and vector-tight plastic bags, and stored in Carts and/or Containers designated by the Director for the collection of Municipal Solid Waste. Municipal Solid Waste shall not be accumulated or stored outside of Carts and/or Containers, and Cart and/or Container lids must remain closed at all times when not adding Municipal Solid Waste to Carts and/or Containers; and

Section 4. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.190 (Schedule for Collection), Subsection A. be amended to read as follows:

9.04.190 Schedule for Collection.

A. The Owner or Occupant must obtain a sufficient number of Containers in quantity or storage capacity such that they are not allowed to overflow with waste or constitute a nuisance and the Containers must be collected at least once a month; and

Section 5. That Article IV – CONSTRUCTION OR DEMOLITION WASTE, Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.250 (Applicability) be amended to read as follows:

ARTICLE IV – CONSTRUCTION OR DEMOLITION MATERIAL

9.04.250 Applicability.
This article shall apply to:

A. Generators of Construction or Demolition Material in the City;

B. Current holders of authorization (such as a building or roofing permit) by City to develop, build, construct or conduct demolition activities; henceforth referred to in this Article as "authorized party;"

C. Self-transporters of Construction or Demolition Material in the City; and

D. Haulers of Construction or Demolition Material in the City.

Section 6. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.260 (Accumulation and Storage) be amended to read as follows:

9.04.260 Accumulation and Storage.
Construction or Demolition Material generated within the City shall be accumulated and stored in compliance with the following provisions:

A. **Construction or Demolition Material**

Generators shall accumulate Construction or Demolition Material in Roll-offs with the following exceptions:

1. Construction or Demolition Material produced by demolition that is so large that it cannot reasonably be placed in a single piece into a Roll-off without protruding outside said Container. Such material shall be permitted to remain non-contained, provided potential wind borne waste or debris is controlled.
2. Rock, concrete, mortar, brick, cinder block, and similar Construction or Demolition Material generated by a single property, including an Improved Property or other properties located within the City, are not required to be containerized, unless these materials have the potential to contribute to run-off to the City's storm water conveyance system. These materials may be collected into piles on the ground of the property where such material was generated and removed to a Designated or Authorized Municipal Solid Waste Facility or a Recycling Facility within seventy-two (72) hours of the completion of construction or demolition work unless otherwise approved by the City Manager or his designee. Other types of Construction or Demolition Material shall not be commingled with permitted piles of these wastes.
3. Shingles, tarpaper and other material from roofing jobs that are not capable of becoming wind borne are not required to be containerized, provided such material is placed directly into a dump truck or similar truck for hauling to a Designated or Authorized Municipal Solid Waste Facility or a Recycling Facility.

B. **Recyclable Materials**

Generators of Construction or Demolition Material in the City are encouraged to participate in recycling. Generators of Construction or Demolition Material in the City who elect to participate in Recycling shall accumulate and store Recyclable Materials that have been separated from Construction or Demolition Material at the project site in accordance with Federal, State and local laws.

Section 7. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.280 (Manifest Requirement), Subsections A and B be amended to read as follows:

9.04.280 Manifest Requirement.

Self-transporters, Permitted Haulers, and Generators of Construction or Demolition Material shall, for each load of said waste transported for disposal, utilize a Construction or Demolition Material manifest provided by the Department, in accordance with the following requirements:

A. **Notification**

1. Upon receiving appropriate authorization from the City to develop, build, construct or conduct construction and/or demolition activities, and prior to

commencement of said activities, the Generator or authorized party for the project shall:

a. Notify the Director, on a form provided by the Department, of the commencement of said project;
b. Provide a copy to the Director of the written agreement for collection required by Section 9.04.270;
c. Calculate and provide an estimated amount of Construction or Demolition Material to be generated during the life of said project; and
d. Purchase from the Department the appropriate number of Construction or Demolition Material manifests to document the disposal of each load of the estimated amount of waste during the life of said project.

2. Failure to purchase and terminate each manifest shall result in a denial of the ability of the Generator or authorized party to purchase manifests from the Department until such time as said requirements are met in full.

B. **Use**

1. Each Hauler shall use a manifest in addition to the requirement for a Permitted Hauler to document each load of waste delivered to a Designated or Authorized Municipal Solid Waste Facility on the Permitted Hauler Vehicle Log for said load, in accordance with this Chapter.
2. For all Construction or Demolition Material generated within the City and collected by a Hauler or transported by a Self-transporter, such Hauler or Self-transporter shall:

a. Document the disposal of each load of Construction or Demolition Material in a manifest provided by the Department;
b. Complete each manifest in its entirety;
c. Terminate each manifest at the Designated or Authorized Municipal Solid Waste Facility or Recycling Facility; and
d. In the event that additional manifests are needed during the life of the project than were purchased at the time of the notification, the Generator or authorized party shall purchase the appropriate number of manifests to accommodate each load of collected Construction or Demolition Material or Recycling Material during the life of said project.

Section 8. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.290 (Disposal Provider) be amended to read as follows:

9.04.290 Disposal Provider.
Self-transporters and Permitted Haulers shall be responsible for ensuring Construction or Demolition Material is delivered to a Designated or Authorized Municipal Solid Waste Facility or Recycling Facility in accordance with this Chapter.

Section 9. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.300 (Schedule for Collection) be amended to read as follows:

9.04.300 Schedule for Collection.
Generators or the authorized party for a property generating Construction or Demolition Material shall enter into a written agreement with a Permitted Hauler for collection as according to the following schedule:

A. Sufficient quantity of Roll-offs at the project site to ensure that Construction or Demolition Material does not become a Nuisance or overfill Roll-offs; and

B. Collection of each Roll-off at least once every fourteen (14) calendar days.

Section 10. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.350 (Identification as Recyclable Materials) be amended to read as follows:

9.04.350 Identification as Recyclable Materials.
Material managed in accordance with all of the following requirements shall be considered Commercial Recyclable Materials for purposes of this Chapter. The management of Carts and Program Recyclable Materials identified as being included within the Residential Recycling Program are not subject to the requirements of this Article.

A. **Separation**
Commercial Recyclable Materials shall:

1. Be separated by the Generator from any Solid Waste generated at the property; and
2. Be composed of cardboard, paper, plastic, glass, metal or other materials as designated by the Director from time to time.

B. **Storage**
Commercial Recyclable Materials shall:

1. Not be commingled with any Solid Waste during storage and/or collection;
2. Be stored in Carts, Containers and/or Roll-offs specifically designated to store Commercial Recyclable Materials, or bulked and secured in a manner not contributing to a Nuisance or potential fire hazard;
3. Be stored in Carts, Containers, Roll-offs or as bulked material with affixed labels, decals, paint or signs that clearly indicate "RECYCLABLE MATERIAL" in letters at least two (2) inches in height, in a color boldly contrasting the paint color of the Cart, Container, Roll-off or bulked material; and
4. Be stored in Carts, Containers, Roll-offs or as bulked material in a manner not constituting a Nuisance or contributing to windblown Litter or discharge to the environment.

C. **Records**

In order to verify Commercial Recyclable Material collection service, Generator shall retain a copy of a written contract or agreement securing Recyclable Material collection service with an identified third party and retain written copies of bills or invoices for the most recent period of twelve (12) calendar months.

Section 11. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.420 (Permitted Vehicle Requirements), Subsection D.1 be amended to read as follows:

9.04.420 Permitted Vehicle Requirements.

D. **Permitted Hauler Vehicle Log**

1. Ensure that each delivery to a Designated or Authorized Municipal Solid Waste Facility or Recycling Facility of Solid Waste and Recyclable Materials collected or otherwise found in the City is identified on the Permitted Hauler Vehicle Log;

Section 12. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.480 (Suspension, Revocation of Hauler Permit; Appeals), Subsection B.1 be amended to read as follows:

9.04.480 Suspension, Revocation of Hauler Permit; Appeals.

B. **Revocation of Hauler Permit**

1. A Hauler Permit may be revoked for any of the following reasons:

   a. The Hauler has had two (2) prior suspensions in a consecutive twelve (12) month span;
   b. The Hauler interferes with an investigation of the Director in the performance of official duties;
   c. A Hauler operates under a suspended Hauler's Permit;
   d. After having received written notice from the City that a Franchise Agreement is required within thirty (30) days of the issuance of the Hauler's Permit or the effective date of this ordinance and after said period of time, Hauler has not entered into a Franchise Agreement with the City;
   e. Hauler's Franchise Agreement required by Chapter 9.04 of the City Code is revoked by the City.

Section 13. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.500 (Permitted Hauler Recycling Rebate), Subsection A be amended to read as follows:

9.04.500 Permitted Hauler Recycling Rebate.

A. Excluding the City, Permitted Haulers will be eligible for a Recycling rebate for Recyclable Materials identified as Commercial Recyclable Materials by Article V and collected from Commercial Properties and Mixed-use Properties in the City provided that such Permitted Hauler meets the following requirements:

1. Permitted Hauler is in good standing with the City;
2. Permitted Hauler has not received more than two (2) written notices of correction from the City during the prior twelve (12) calendar months;
3. Permitted Hauler has entered into a written agreement with the City for the Permitted Hauler Recycling rebate program; and
4. Other requirements as established by the City.

Section 14. That Title 9 (Health and Safety), Chapter 9.04 (Solid Waste Management), Section 9.04.910 (Litter Control), Subsections A and B be amended to read as follows:

9.04.910 Litter Control.
Owners shall comply with the following Litter control requirements:

A. **Signs**
Owners shall post reflective warning signs with the phrase "LITTERING PROHIBITED" shall be posted at Parking Lots serving Retail and Service Establishments according to the following requirements:

1. Signs shall be constructed of metal, wood or durable plastic;
2. Signs shall be posted on a pole or fixed structure between four (4) and six (6) feet above ground surface;
3. Signs shall have lettering consisting of uppercase letters of no less than two (2) inches in height and must be of a color contrasting the color of the sign itself; and
4. Signs shall be distributed around the Parking Lot area according to the following requirements:

    a. A minimum of one (1) sign shall be posted for Parking Lots providing between one (1) and twenty-five (25) parking spaces, or where parking spaces are not demarcated, for parking lots up to 5,000 square feet; or
    b. One (1) sign shall be posted per twenty-five (25) parking spaces provided, or where parking spaces are not demarcated, for each 5,000 square feet of Parking Lot area provided, up to a maximum of five (5) signs total per Parking Lot.

B. **Litter Receptacles**
Owners shall provide Litter receptacles at Parking Lots serving Retail and Service Establishments according to the following requirements:

1. Litter receptacles shall have a capacity between fifty-five (55) and ninety-six (96) gallons;
2. A minimum of two (2) Litter receptacles shall be provided for Parking Lots providing between one (1) and twenty-five (25) parking spaces, or where parking spaces are not demarcated, for Parking Lots up to 5,000 square feet;
3. One (1) additional Litter receptacle shall be provided per additional fifteen (15) parking spaces, or where parking spaces are not demarcated, for each additional 3,000 square feet of Parking Lot area, up to a maximum of twenty (20) Litter receptacles total per Parking Lot;
4. Litter receptacles shall be spaced throughout the Parking Lot area and/or along the front area of the buildings accessible to the public; and
5. Owners shall ensure that Litter receptacles are emptied regularly, and shall ensure that at no time is Litter allowed to overflow receptacles.

Section 15. That Section 3 to Ordinance No. 017380 be amended to read as follows:

Section 3. The provisions of this Chapter shall be effective on September 1, 2010, with the following exception:

A. Requirements to deliver Solid Waste to Designated or Authorized Municipal Solid Waste Facility shall take effect on September 1, 2011;

B. Requirements for a Hauler franchise agreement shall take effect on April 4, 2011.

C. Requirements for a Hauler Permit shall take effect on September 1, 2011.

Section 16. Except as herein amended, Title 9 (Health and Safety), shall remain in full force and effect.

(signatures follow on next page)

PASSED AND APPROVED this _____ day of _____, 2010.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Ellen A. Smyth, P.E., Director
Environmental Services Department

Environmental Services Department
Summary: Revisions to Chapter 9.04 (Solid waste Management) of the City Code

Definitions

- *Construction or Demolition Waste* was re-defined as *Construction or Demolition Material*. This is due to the fact that this type of material may be either disposed of or recycled in bulk, making it difficult to categorize as one or the other at the point of generation. The term *material* recognizes that it is a by-product of the construction or demolition process, but does not designate it as a Solid Waste until it is disposed of at an Authorized Municipal Solid Waste Facility.
- *Retail or Service Establishment*; typographic correction.

9.04.100.A

- Removed: The City's right to require resolution of overflowing Residential Carts within 24 hours. Legal review is required to ensure consistent notification and resolution times, consistent with State law.

9.04.190.A: Schedule for Collection (Commercial Properties)

- Changed from minimum of once per week to allow Owner/Occupant to obtain the best collection service for waste needs. Owner/Occupant must have a sufficient number of containers to prevent overflowing or a nuisance, and be picked up at least once per month. This allows Owners/Occupants with trash compactors or with low/episodic waste generation to obtain service that better suits their needs. Minimum of once per week collection is prescriptive, limiting to Owner/Occupant, and does not ensure a higher level of waste management.

Article IV: Construction or Demolition Material

- All references to *Construction or Demolition Waste* were replaced with *Construction or Demolition Material.*
- All references to *Designated or Authorized Municipal Solid Waste Facility* were amended to include *or Recycling Facility*, in order to recognize material that was being recycled, instead of disposed.

9.04.350: Commercial Recyclable Materials

- Definition amended to read *Commercial Recyclable Materials* rather than simply *Recyclable Materials*. This section addresses how Owners/Occupants must manage recyclables at their place of business that will be recycled and therefore not subject to flow control.

9.04.420: Permitted Vehicle Requirements

- Amended Vehicle Log requirement to record each load delivered to landfill, rather than each load collected.

9.04.480.B: Revocation of Hauler Permit

- Amended to include that Hauler Permit will be revoked if a Franchisee's Franchise Agreement is revoked by the City.

9.04.910: Litter Control

- Places a maximum cap of five (per lot) required *Littering Prohibited* signs in parking lots.
- Places a maximum cap of 20 (per lot) required Litter Receptacles in parking lots.