

**ORDINANCE NO. 18-1831**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 5200 OF THE CARSON MUNICIPAL CODE IN ORDER TO ADOPT, RESTATE AND REAFFIRM STATE LAW PROHIBITIONS UPON THE AUTHORITY OF SOLID WASTE ENTERPRISES FROM EXPANDING OR SOLICITING NEW BUSINESS DURING ANY CONTINUATION OF SERVICES DURING ANY TIME PERIODS SET FORTH IN CALIFORNIA PUBLIC RESOURCES CODE SECTION 49520; RESTATE AND REAFFIRM THE APPLICATION OF STATE DIVERSION MANDATES TO EACH AND EVERY SOLID WASTE HAULER**

**WHEREAS,** The Carson Municipal Code (“CMC”) has historically required franchised arrangements for the provision of solid waste handling and hauling services within the City of Carson (“City”).

**WHEREAS,** CMC § 5200 acknowledges that the public health, safety and welfare of Carson citizens is best served by the provision of solid waste services by an exclusively-franchised solid waste enterprise.

**WHEREAS,** California Public Resources Code (“PRC”) § 49520 provides that certain existing solid waste handling service providers may provide their services for a period of up-to five years following notice of the City’s determination to transition to an exclusive waste service arrangement, as follows:

“49520. If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been lawfully provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.

If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of the contract or franchise or five years, whichever is less.”

**WHEREAS,** PRC § 49520 specifically states that any solid waste enterprise exercising rights of continued service is limited to “those services” previously authorized by franchise, contract, license, or permit, such that the solid waste enterprise exercising said continuation rights only holds such rights as to its pre-existing service accounts.

**WHEREAS,** California courts have held that PRC § 49520 does not authorize solid waste enterprises exercising their rights of continued service pursuant to PRC § 49520 to expand their account base or solicit new accounts during such period of continued services. (*Valley Vista Services, Inc. v. City of Monterey Park* (2004) 13 Cal.Rptr.3d 433.)

**WHEREAS,** On December 5, 2017, City awarded a new franchise for waste hauling services to be provided in the City of Carson. The award of the new franchise followed from a competitive process after more than 20 years of service from the City’s former primary waste hauler.

**WHEREAS,** As part of the competitive process for a new franchised waste hauler in the City of Carson, the City specifically sought assistance and implementation of programs and services to meet current and future diversion mandates requiring all state agencies and large state facilities to divert at least 50% of their solid waste from disposal facilities. (Pub.Res.Code § 40000; Pub.Res.Code § 40900.1; Pub.Res.Code § 41780.) Proposers were also to demonstrate an ability to support the statewide, non-mandated goal of 75% recycling, composting or source reduction of solid waste by 2020.

**WHEREAS,** The City had found that its prior franchised waste hauler fell short of the aforementioned waste diversion mandates. Although the law requires a 50% diversion rate, the City's former waste hauler provided only about a 15% diversion rate.

**WHEREAS,** Some previous solid waste haulers in the City have disputed or questioned the City's expectations as to hauler responsibility for maintaining the City's compliance with State mandated diversion rates. To this end, the City wishes to affirm its expectation that each and every solid waste enterprise operating in the City shall be individually responsible for meeting current and future diversion mandates of the State of California.

**WHEREAS,** The above-described diversion rate deficiencies further support the conclusion that former solid waste enterprises exercising their rights of continued service pursuant to PRC § 49520 shall not expand their account base or solicit new accounts during such period of continued services. As held by California courts:

"Allowing trash haulers who do not conform to the city's new disposal system to expand their operations during the phase-out period could undermine the city's ability to comply with the [California Integrated Waste Management] Act, and therefore the Act itself." (*Valley Vista Services, supra*, at 441.)

Therefore, the Council finds that allowing the expansion of solid waste services/accounts by any solid waste enterprise during any period of continued service rights pursuant to PRC § 49520 is inimical to the State Waste Management Act and the health, safety and welfare of the citizens of Carson.

**WHEREAS,** The CMC amendments effected by this ordinance are declaratory of existing law.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:**

**SECTION 1. THE CITY COUNCIL OF THE CITY OF CARSON HEREBY MAKES THE FOLLOWING FINDINGS:**

- A. The recitals set forth above are all true and correct and are incorporated herein.
- B. Allowing the expansion of solid waste services/accounts by any solid waste enterprise during any period of continued service rights pursuant to PRC § 49520 is inimical to the State Waste Management Act and the health, safety and welfare of the citizens of Carson.
- C. The Carson Municipal Code ("CMC") amendments effected by this ordinance are declaratory of existing law and policy.

**SECTION 2. CHAPTER 2, SECTION 5200, OF ARTICLE V OF THE CARSON CITY CODE IS HEREBY AMENDED AS FOLLOWS (REVISIONS SHOWN IN UNDERSCORE AND ITALICS):**

"5200 Legislative Policy.

The City Council has found and determined, and hereby finds and determines, in order to meet the requirements of the California Integrated Waste Management Act of 1989, including requirements for source reduction of the solid waste stream, diversion of solid waste from landfills and conservation of natural resources, it is necessary to regulate the collection of solid waste from commercial/industrial premises in addition to residential premises and to encourage recycling of solid waste materials. In addition thereto, the requirements of the Environmental Protection Agency and the Southern California Air Quality Management District and other regulatory agencies with respect to air pollution and traffic congestion management require regulation, and, where possible, reduction of the number of waste collection vehicles and

vehicle trips with attendant discharge of air contaminants and pollution. Reduction of the number of heavy waste collection vehicles using the City streets daily will reduce traffic hazards and congestion and promote safety. Notwithstanding the City's collective diversion rate City-wide, each and every solid waste enterprise operating in the City shall be individually responsible for meeting current and future diversion mandates of the State of California.

The City Council further finds and determines that the storage, accumulation, collection and disposal of solid waste, including without limitation garbage, trash, debris and other discarded materials, is a matter of great public concern in that improper control of such matters may create a public nuisance, air pollution, fire hazard, rat and insect infestation and other problems affecting the public health, safety and welfare. Regulation of the collection of garbage, refuse and other discarded materials from all residential, commercial and industrial properties within the City will provide the most orderly and efficient solution to such problems and promote the public health, safety and welfare. Regulation of solid waste business in the City will also promote public health and safety by, among other things, requiring newer and safer vehicles, regular maintenance, reduction of spillage and litter in the public streets, establishing accountability for the cleaning of refuse bins and containers, and accountability to the public.

The City Council hereby finds and determines that the public health, safety and welfare will be served by providing for exclusive franchises for residential refuse collection services, and for commercial and industrial collection services subject to the rights of certain existing commercial/industrial collectors who are qualified under Public Resources Code Sections 49520 and 49521 to continue the solid waste collection services for five (5) years following notice given pursuant to that section. Such five (5) year period expires March 1, 1996. Notwithstanding such expiration date, any solid waste collection services that continue service pursuant to Public Resources Code Sections 49520 and 49521 (as may be amended), shall not expand their account base or solicit new accounts during such period of continued services."

**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision 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, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days after its passage.

**SECTION 5. CERTIFICATION.** The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

**PASSED AND ADOPTED** on the 8<sup>th</sup> day of January, 2019, by the following vote:

APPROVED AS TO FORM:  
/s/

Sunny K. Soltani, City Attorney

CITY OF CARSON:  
/s/

Albert Robles, Mayor

ATTEST:  
/s/  
Donesia Gause-Aldana, MMC, City Clerk

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss.  
CITY OF CARSON                )

I, Donesia Gause-Aldana, City Clerk of the City of Carson, California, hereby attest to and certify that the foregoing ordinance, being Ordinance 18-1831 passed first reading on the 13<sup>th</sup> day of December, 2018, adopted by the Carson City Council at its meeting held on the 8<sup>th</sup> day of January, 2019, by the following roll call vote:

AYES:            COUNCIL MEMBERS:   Robles, Hilton, Davis-Holmes, Santarina, Hicks  
NOES:           COUNCIL MEMBERS:   None  
ABSTAIN:       COUNCIL MEMBERS:   None  
ABSENT:         COUNCIL MEMBERS:   None

/s/  
Donesia Gause-Aldana, MMC, City Clerk