

CITY OF OAKLAND
AGENDA REPORT

2009 FEB 19 PM 3:12

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: March 3, 2009

RE: **Supplemental Report Regarding A Public Hearing and Re-introduction of a Revised Ordinance (Including Changes To The Extent Of The Area For Which Primary Collection Centers Are Responsible For Litter, Garbage And Shopping Cart Removal, And Allowed Parking Areas For Facility-Owned Vehicles) Amending The Oakland Planning Code To:**

(1) Amend Chapter 17.102 "General Regulations Applicable To All Or Several Zones" To Include Performance Standards For Primary Collection Center Recycling Uses In All Zones;

(2) Amend Chapter 17.73 "CIX-1, CIX-2, IG And IO Industrial Zones" To Include Regulations Concerning Primary Collection Center Recycling Uses In CIX-1, CIX-2 And IG Zones;

(3) Amend Chapter 17.10 "Use Classifications" To Delete "Intermediate Processing Facility" As A Land Use Activity Type From O.M.C. Section 17.10.586 "Recycling And Waste-Related Industrial Activities"

SUMMARY

Comment letters received from the public by City staff since the publication of the previous report for this item are included as Attachment A to this report. Staff is analyzing information contained in the comment letters and intends to publish a response prior to the March 3, 2009 Council meeting.

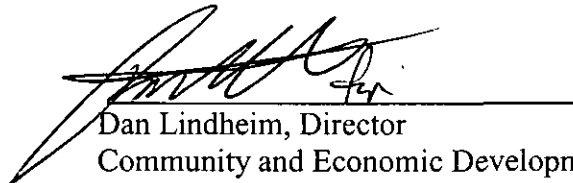
Item: _____
City Council
March 3, 2009

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the Council receive the public comment letters included as Attachment A to this supplemental report.

Staff will provide a separate supplemental report with its recommendations for proposed changes to the recycling performance standards following completion of our analysis of submitted comments.

Respectfully submitted,

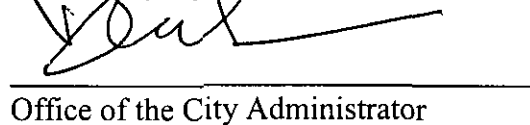


Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:
Eric Angstadt, Strategic Planning Manager

Prepared by:
Alisa Shen, Planner III
Strategic Planning Division, Planning and Zoning

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

Attachment A – Comment Letters

1. 1-21-09, KMC Paper, Jimmy Chang
2. 1-29-09 Aaron Metals, Paul and Aaron Forkash
3. 1-31-09 William Johnson (emailed)
4. 2-2-09 Robert (emailed)
5. 2-2-09 Mary Farrant (emailed)
6. 2-5-09 Robert Bernheimer

Item: _____
City Council
March 3, 2009

received
11 29 09 (12)

KMC PAPER
2505 Poplar Street
Oakland, CA 94607
Phone: 510-835-3537 Fax: 510-835-9077

January 22, 2009

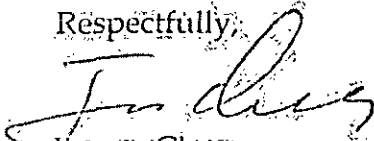
Dear City Council Member

I am the owner of KMC Trading and have been a recycler in Oakland for 28 years. I don't think performance standards are a good idea but will agree since I am stuck with it.

We have reached agreement on two portions of the rules, regarding shopping carts and a trash plan. Please see attached draft sent to me by city staff that was agreed to when I met with Councilmember Nadel and Oakland Recycling Stakeholders. We will be responsible for recycling related trash for the 4 streets around our yard plus what we can see.

I don't like the parking rule because there is no place to park. Besides why should every business in Oakland get to park across the street from me except my own trucks? It doesn't make any sense. Everybody in Oakland can park there except me!

Respectfully,


Jimmy Chang
KMC Trading

CC: Eric Angstadt, Alisa Shen, Mark Wald

Draft language proposed for O.M.C. Sections 17-73.035 B.5d and 5e regarding litter, debris, graffiti, cleanliness and shopping carts for existing, new or expanded uses is shown as an excerpt from the text that was presented at the December 9, 2008 City Council meeting with proposed compromise language shown in ~~strikeout/underline~~.

- d. A cleanliness/litter management and control plan shall be developed, implemented and maintained, such that it is ready for inspection. The plan shall include provisions for the disposal of ~~recycling-related litter and debris in the public right-of-way all materials, within a one-block radius of the premises, as well as a graffiti abatement plan, a one-block radius of the premises shall comprise all street sides of the nine (9) square block area that includes the block on which the premises is located (as the center block of the nine (9) square block area) within the area comprised of all streets adjacent to the premises, and the one-block extension of those streets to the north and south, and east and west, respectively. (See Figure 1).~~ This would not include material illegally dumped that is not related to the recycling operation, including but not limited to hazardous material, containers of paint or unidentified liquids, tree trimmings, residential, commercial and/or industrial waste or dumping of materials not accepted by the Primary Collection Center. In addition, the Primary Collection Center shall produce a notice to distribute to customers that states that all illegal dumping shall be reported to City authorities.
- e. The Primary Collection Center shall be responsible for keeping the area within a two (2) block radius of the premises clear of shopping carts. A site/immediate neighborhood (five (5) block radius) shopping cart management plan shall be developed, implemented and maintained, such that it is ready for inspection. If the Primary Collection Center accepts materials from the public brought by means of a shopping cart, it shall be responsible for the retrieval of all shopping carts within the area comprised of all streets adjacent to the premises, and the one-block extension of those streets to the north and south, and east and west, respectively. (See Figure 1). Additionally, a Primary Collection Center shall post signage that includes contact information to report abandoned shopping carts in the vicinity of the facility, if called or notified by a member of the public about abandoned shopping carts located within a two-block radius of the premises, a Primary Collection Center shall retrieve said carts. A two-block radius of the premises shall comprise all street sides of the twenty-five (25) square block area that includes the block on which the premises is located (as the center block of the twenty-five (25) square block area); a five (5) block radius of the premises shall comprise all street sides of the one hundred twenty-one (121) square block area that includes the block on which the premises is located (as the center block of the one hundred twenty-one (121) square block area).

Two alternatives were discussed regarding parking of facility-owned vehicles. No draft compromise language was proposed:

Option 1: "During business hours, all facility-owned vehicles shall be stored within the facility, at an appropriate alternative off-street location, or parked on the street sides immediately adjacent to and located within the block on which the Primary Collection Center is located" (O.M.C. Section 17-73.35B.7d per December 9, 2008 text presented to City Council for first reading).

Option 2: "During business hours, all facility-owned vehicles shall be stored within the facility, at an appropriate alternative off-street location, or parked on either side of the street sides immediately adjacent to and located within the block on which the Primary Collection Center is located, except on streets adjacent to areas zoned as open space."



BUYERS OF SCRAP METAL

received
1/21/08

January 21, 2008

Re: Recycling Industry Performance Standards - Off-Site Parking Regulations

Dear Members of the Oakland City Council:

On January 5th representatives of Oakland's recycling community, the City of Oakland Planning Department and Councilmember Nancy Nadel compromised on two critical portions of the proposed recycling legislation with regard to abandoned shopping, early retrieval and trash management. Outstanding is the issue of company vehicle off-site parking during business hours.

This letter expresses our practical solution to the as-yet unresolved issue of off-site parking requirements.

In general, codes that target specific industries and exclude all others are discriminatory but the regulations that outline areas where recycling company vehicles may park are exceedingly offensive. It makes no sense that every other commercial vehicle in the City can park anywhere near our facility whenever they want but that our own commercial vehicles may not.

We dispatch the drivers in the morning before we open to the public. At this hour, our vehicles are still inside our facility (where they are parked and stored over night). Throughout the day, their itineraries may undergo modifications. To receive the latest instructions or to pick up paperwork such as shipping manifests and weight certificates, our drivers temporarily park on the public streets near our company and walk in to our facility. Depending on the intricacy of the pick-up or delivery, they park in those spaces for no longer than a half hour. Yet there are times when this procedure may slightly exceed a half hour.

Practical Solution:

During business hours all facility-owned vehicles should (a) be stored within the facility, (b) at an appropriate alternative off-street location, or (c) parked on the streets (either side) located within the block on which the Primary Collection Center is located, excluding blocks and streets that prohibit commercial vehicle parking and streets adjacent to areas zoned as open space.

Since the City coordinated the abovementioned compromises through a process that included City Council representation and stakeholders, we support the existing language on all other codes pertaining to the recycling industry.

Respectfully Submitted,

Aaron Forkash
Aaron Metals Co.

Paul Forkash
Aaron Metals Co.

©C Eric Angstadt, Alisa Shen, Mark Wald

From: William Johnson [mailto:wihj@yahoo.com]
Sent: Saturday, January 31, 2009 7:50 PM
To: City Administrator's Office
Subject: Performance Standards for Recyclers

Dear City Administrator,

I am writing to urge you to please incorporate the following components into the new Performance Standards for Recyclers in West Oakland:

In addition to existing local, state, and national conditions:

1. Use of stolen shopping carts to transport recyclables to recycling centers should be outlawed. Not only are these shopping carts a regular hazard to drivers and residents, their use also endangers the lives of the customers that push and pull these carts down the middle of streets at all hours of the day and night.
2. If a recycler accepts materials transported in a stolen shopping cart, they should be fined for being accomplices to theft.
3. Scrappers and Recyclers must provide off street parking for their employees and customers.
4. Problem: streets are clogged with employee parking, City streets are blocked by customers waiting to get in. Blocking of city streets is a nuisance and can be dangerously unsafe.
5. Customer cues on city streets shall not be allowed.
6. Scrappers and Recyclers must actively maintain the 4 block area surrounding the business free from all business residue: shopping carts, stripped materials.
7. Scrappers and Recyclers must either take mixed scrap materials, or provide area where customers can separate and properly dispose of materials.
8. Problem: Abandoned shopping carts and stripped materials such as glass, weatherstripping, steel tabs off radiators, wire insulation, etc. are dumped on city streets and sidewalks. City streets and sidewalks are being used by scrapper customers to separate items. It is not enough to require one block area residue free: The result of that is that the scrappers' block looks tidy, and the neighbors one block away must endure all the dumping and blight. City of Oakland is also paying for this through litter enforcement pick ups.
9. New Scrappers and recyclers must be located no closer than 600 ft. to a residential zone. Existing scrappers and recyclers within 600 ft. must obtain CUP.
10. Problem: Noise and air quality from these businesses is not healthy for children.
11. ATTACHMENT D
Existing noise and vibration standards must be met and enforced.
12. Scrap recycle businesses' compliance to guidelines shall be reviewed by the city in one year and then every three years thereafter.
13. Problem: Scrappers are ignoring city laws and ignoring citizen complaints.
14. All non-ferrous metals, with the exception of aluminum cans, must be paid in check form only, no cash.
15. All purchases shall be digitally photographed and matched to the seller's information, records to be kept minimum one year.
16. Problems: Due to its high resale value, non-ferrous metal theft is currently a global crisis. Scrappers must become proactive to address this problem. Until they do, scrappers will earn the reputation as being part of the problem: thieves, profiting from crime. Payment in check form will help discourage theft by creating more accountability from customers.
17. Also, predators wait for customers leaving with cash. Payment in check will make neighborhood streets safer: less drug dealers and prostitutes, less robbers who prey upon customers.

Of the items from your sample standards/guidelines handout at the last meeting, I endorse the following:

18. Site Design: Compliance with clean water act and/or health codes

19. Signage: 1.
20. Appearance/Design: 1. 2. 3. 4. 5.
21. Noise: comply with city standards
22. Litter/Debris/ graffiti/ cleanliness: 1. 2. 3. 5. 6. 7.
23. Parking/Traffic: 2. 3. 6. 7.
24. Equipment/Facilities: 2.
25. Operation: 1.(if within 600ft. R zone) 8. 9. 10. 11. 15.

I urge you to please make our neighborhoods cleaner and safer for all of us who live here and are constantly exposed to the very dangerous hazards these businesses create.

Thank you,
William Johnson
Magnolia Street
West Oakland

--- On Mon, 2/2/09, Robert3327 <robert3327@gmail.com> wrote:

From: Robert3327 <robert3327@gmail.com>

Subject: [dogtown] This is why Recycling Companies need to be Forced to Automatically Clean Up after themselves...

To: nnadel@oaklandnet.com, cityadministrator@oaklandnet.com, dlindheim@oaklandnet.com, eangstad@oaklandnet.com

Cc: dogtown@yahoogroups.com

Date: Monday, February 2, 2009, 6:41 PM

Dear Councilperson Nadel, Mr Lindheim and Mr Angstad,

I was driving in my neighborhood around 4:50p. Alliance was closed to customers but they were still cleaning up as I saw their trucks and personal moving around on Magnolia street. At this time, in the neighborhood there were quite a number of abandoned shopping carts, garbage and recycling bins...and the general trash that Alliance customer regularly leave behind.

Alliance says they will pickup shopping carts, etc. if you call them. Well, when people come home from work Alliance is closed. These pictures show just some for the abandoned crap that Alliance customers leave behind illegally. I also drove around after 5:00p to see if Alliance had pick up anything on their own. Nada. Alliance (or any recycling company) needs to automatically clean up after themselves on a daily basis.

At your next meeting please require all recycling companies to automatically clean up around their facility and in the immediate neighborhood on a daily basis at the end of the day. Also, provide a hotline for the neighborhood to call and report when these companies are not doing so and provide significant fines for non-compliance. Thank for your support.

West Oakland Resident

Emailed attachments:

2-2 Abandoned Garbage Bins in Front of a Closed Alliance



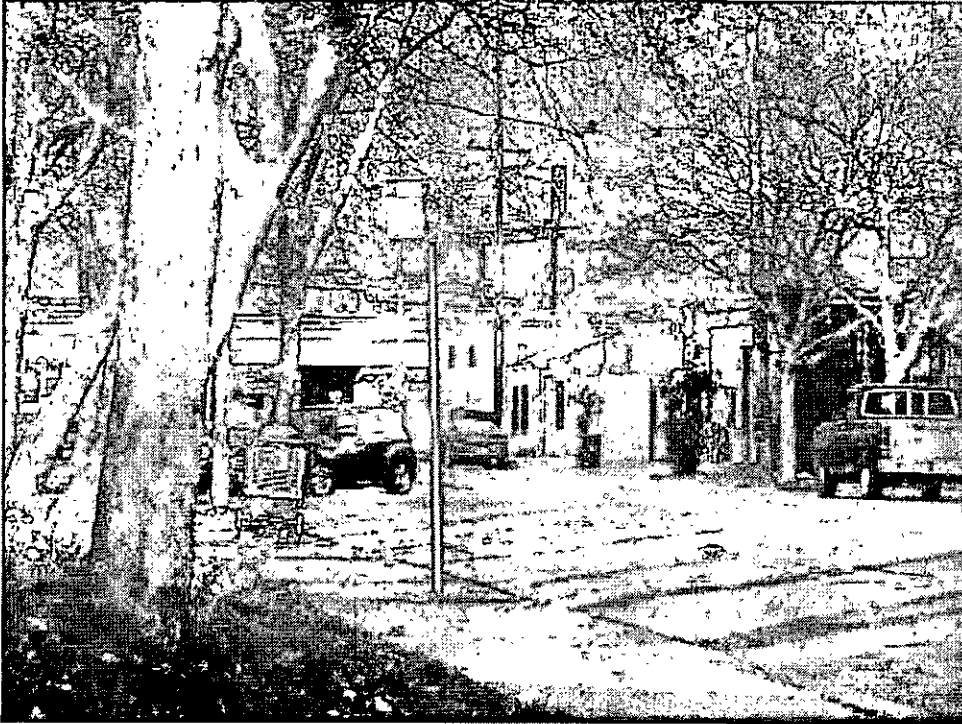
2-2 Abandoned Recycling Bin Around the Corner from Alliance



2-2 Abandoned Recycling Bin Kitty-Corner to Alliance



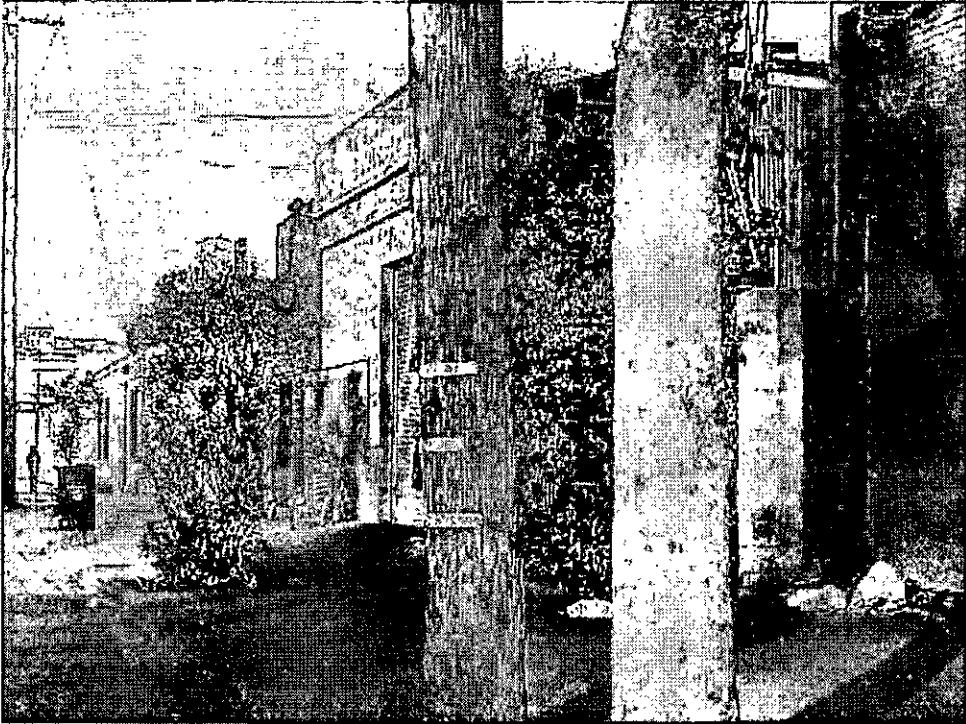
2-2 Abandoned Shopping Cart Kitty-Corner to a Closed Alliance



2-2 Alliance Closing Up but not Cleaning Up



2-2 Trash and Trash Bin in Front of a Closed Alliance



From: Farrant, Mary [mailto:Mary.Farrant@ucsfmedctr.org]
Sent: Monday, February 02, 2009 11:26 AM
To: Brooks, Desley; Quan, Jean; Kernighan, Pat; atlarge; De La Fuente, Ignacio; Nadel, Nancy; Brunner, Jane; Reid, Larry
Cc: City Administrator's Office; Office of the Mayor
Subject: New Performance Standards for Recyclers in West Oakland
Importance: High

1 February 2009

Dear City Council President and Members:

I am writing to urge you to please incorporate the following into the **new Performance Standards for Recyclers in West Oakland**, in addition to existing local, state, and national conditions:

1. Use of **stolen shopping carts** to transport recyclables to recycling centers should be outlawed. Not only are these shopping carts a regular hazard to drivers and residents, their use also endangers the lives of the customers that push and pull these carts down the middle of streets at all hours of the day and night. If a recycler accepts materials transported in a stolen shopping cart, the recycler should be fined for being accomplices to theft.
2. Scrapppers and recyclers must provide **off street parking** for their employees and customers. Problem: streets are clogged with employee parking. City streets are blocked by customers waiting to get in. Blocking of city streets is a nuisance and can be dangerously unsafe.
3. Customer queues on city streets shall not be allowed.
4. Scrapppers and Recyclers must actively maintain the 4 block area surrounding the business free from all business residue such as shopping carts, stripped materials.
5. Scrapppers and Recyclers must either take mixed scrap materials, or provide area where customers can separate and properly dispose of materials.
6. Problem: Abandoned shopping carts and stripped materials such as glass, weather stripping, steel tabs off radiators, wire insulation, etc. are dumped on city streets and sidewalks. City streets and sidewalks are being used by scrapper customers to separate items. It is not enough to require one block area residue free: The result of that is that the scrapper's block looks tidy, and the neighbors one block away must endure all the dumping and blight. City of Oakland is also paying for this through litter enforcement pick ups. **New scrapppers and recyclers must be located no closer than 600 ft. to a residential zone. Existing scrapppers and recyclers within 600 ft. must obtain CUP.**
7. Problem: Noise and air quality from these businesses is not healthy for children. **Existing noise and vibration standards must be met and enforced.**
8. Scrap recycle businesses' compliance to guidelines shall be reviewed by the city every year.
9. Problem: Scrapppers are ignoring city laws and ignoring citizen complaints. **All non-ferrous metals, with the exception of aluminum cans, must be paid in check form only, no cash. All purchases shall be digitally photographed and matched to the seller's information, records to be kept minimum one year.**
10. Problem: Due to its high resale value, non-ferrous metal theft is currently a global crisis. Scrapppers must become proactive to address this problem. Until they do, scrapppers will earn the reputation as being part of the problem. **Payment in check form will help discourage theft by creating more accountability from customers.** Also, predators wait for customers leaving with cash. Payment in check will make neighborhood streets safer: fewer drug dealers and prostitutes, fewer robbers who prey upon customers.

Of the items from your sample standards/guidelines handout at the last meeting, I endorse the following:

11. Site Design: Compliance with clean water act and/or health codes
12. Signage: 1.
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14. Noise: comply with city standards
15. Litter/Debris/ graffiti/ cleanliness: 1. 2. 3. 5. 6. 7.
16. Parking/Traffic: 2. 3. 6. 7.
17. Equipment/Facilities: 2.
18. Operation: 1. (if within 600ft. R zone) 8. 9. 10. 11. 15.

I urge you to please make our neighborhoods cleaner and safer for all of us who live here, who vote here and who are constantly exposed to the very dangerous hazards these businesses create.

Thank you,
Mary Farrant
Magnolia Street
West Oakland

Mary Farrant
Director, Neuroimaging Core Lab
MAPS Clinical Trial
UCSF Stroke Sciences Group
415-502-2096 O
415-514-2119 F
510-912-2534 C

ROBERT A. BERNHEIMER

A Professional Law Corporation

45-025 Manitou Drive, Suite 3, Indian Wells, California 92210
Phone (760) 360-7666 / Fax (760) 776-1760
Rob@RobBernheimer.com

February 5, 2009

Eric Angstadt, CEDA
250 Frank Ogawa Plaza; 3d Floor
Oakland, CA 94612

Mark Wald
Office of Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612

Re: Opposition to Proposed Amendment to Recycling Performance Standards

Dear Mr. Angstadt and Mr. Wald:

This firm has the privilege of representing Alliance Metals ("Alliance") regarding recycling and certification matters. I have represented recyclers and solid waste handlers throughout California for more than 15 years. This letter is written in opposition to the proposed amendment by Council Member Nadel to modify the draft Recycling Performance Standards. The proposed amendment would prohibit Oakland recyclers from accepting material delivered to recycling facilities by customers using identifiable shopping carts ("Amendment").

The proposed Amendment is illegal because it is:

- (1) Preempted by California's Beverage Container Recycling laws and contrary to State-adopted recycling policy, and
- (2) Unconstitutionally discriminatory in violation of the guarantees of due process and equal protection under the law.

I. SUMMARY

The Amendment would restrict recyclers from accepting material, including California Redemption Value (CRV) containers, from certain classes of customers. Most directly in conflict with this proposal is Public Resources Code §14572(a)¹, which requires licensed recyclers to accept any empty beverage container from any consumer. There are no exceptions. While the analysis included with the proposed Amendment by Council Member Nadel accurately sets forth the latitude cities may have in regulating shopping cart retrieval under the Business & Professions Code, it ignores recycling matters that are governed by the Public Resources Code.

¹ All Code references will be to the California Public Resources Code unless otherwise noted.

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A Professional Law Corporation

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The proposed prohibition from accepting recycling containers from people with identified shopping carts is not regulating cart retrieval, but rather, an attempt at regulating the activity of State licensed recyclers. After all, the title of the Ordinance is "Recycling Performance Standards." The ordinance being considered is not a shopping cart ordinance. The laws governing recycling, which this proposed Amendment is targeted towards, clearly set forth the guidelines by which certified recyclers must follow. When the state recycling laws are applied as analyzed below, a clear conflict appears with regards to the provision presented in the proposed Amendment.

State recycling law also demonstrates a policy to promote recycling to the maximum extent feasible (California Integrated Waste Management Act (§ 40000 et seq., the "Act"). The Act's purpose is "to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible." (§ 40052). The Act requires each City to reduce solid waste by 50% (§ 41780). Limiting the ability of people to recycle by monitoring certain modes of transportation (walk in customers with carts) and not others such as car, truck, bicycle, laundry cart, debris bin, generic shopping carts, etc. inhibits the availability of recycling to the poorest members of society and prevents participation in recycling by those that need the money the most. This very clearly conflicts with the State policy to promote recycling to the maximum extent feasible.

Finally, the proposed Amendment is Constitutionally discriminatory. The Equal Protection clauses of the U.S. and California Constitutions prohibit Oakland from enacting the proposed Amendment as it would deny certain individuals equal protection under the laws and, under well established principles of substantive due process, the proposed amendment is arbitrary and capricious.

Because the proposed Amendment clearly violates both State recycling laws and well established Constitutional principles, as more particularly analyzed below, we respectfully request that the City of Oakland reject the proposed Amendment by Council Member Nadel.

II. THE PROPOSED AMENDMENT IS PREEMPTED BY CALIFORNIA BEVERAGE CONTAINER LAWS AND CONTRARY TO STATE POLICY

The California Department of Conservation, Division of Recycling ("DOR") certifies recyclers pursuant to the California Beverage Container and Litter Reduction Act (Public Resources Code §§ 14500 et seq., the "Beverage Container Act"). The Beverage Container Act was established by AB 2020 in 1986 to ensure that beverage containers in California are recycled. According to the DOR, Californians recycle more than 40 million beverage containers each day. In 2007, 21.9 billion beverage containers were sold in California and 14.7 billion were recycled. (A copy of the DOR 2007 Fact Sheet is attached).

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A Professional Law Corporation

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California's beverage container recycling program is different than most state sponsored recycling programs. Traditionally, a deposit is paid on each container sold and the consumer returns the used container to a grocery store for a refund. Grocery stores in California do not collect used beverage containers or pay refunds. Rather, recyclers throughout the state collect beverage containers from the public and pay the refund. Some recyclers operate on the parking lots of grocery stores, but the majority of containers collected in California are handled by individual recycling companies. This is particularly true in the City of Oakland

Because consumers cannot collect their refund from grocery stores, the California Legislature put great emphasis on the convenience with which people should be able to return plastic, bottles and cans and collect their refund. Without a convenient system for consumers to collect their refund, a deposit would really amount to a hidden tax. The Beverage Container Act was not intended to be a tax, but rather a financial incentive to promote and ensure recycling.

To guarantee convenience to all California consumers, certified recyclers are required under the Beverage Container Act to:

1. Make recycling convenient to consumers (§ 14501(e));
2. Collect all empty beverage containers, regardless of type (§ 14538(b)(3));
3. Accept any empty beverage container from any consumer (§ 14572(a));
4. Be open for business at least 30 hours per week (California Code of Regulations, Title 14, Division 2, Chapter 5, Subchapter 6, § 2500(a)(4)(A) ("CCR"));
5. Be open for business at least 5 hours per week other than 9:00 a.m. to 5:00 p.m. Monday through Friday (CCR § 2500(a)(4)(B));
6. Maintain specific signage at the recycling center.

Because of this extensive State statutory framework for beverage container recycling, local jurisdictions are preempted from imposing any blanket rule which denies access to certified recyclers to the public or any targeted group such as the poor or those that cannot afford a car. Article XI, section 7, of the California Constitution provides that a city "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws.*" (Emphasis added). In this regard, Cities are preempted from imposing conditions which violate State law if the subject matter has been:

- (1) So fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;
- (2) Partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or
- (3) Partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state

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A Professional Law Corporation

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outweighs the possible benefit to the municipality. (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485).

The Beverage Container Act occupies the field in regards to statewide recycling programs and the public's access to recyclers and their CRV refund. The principles of the Beverage Container Act preempt local government from prohibiting the collection of containers from individual consumers. Without such preemption, California State Certified Recycling Centers may be deemed in violation of their recycling certification if they refuse to accept containers from certain underprivileged consumers such as shopping cart traffic. This would create a direct conflict between State law and local rules, which is exactly what the Constitutionally based rule of preemption seeks to avoid. When the Beverage Container Act is considered in conjunction with the California Integrated Waste Management Act, the Legislative intent to promote recycling becomes even more clear. Oakland should not create a conflict with State law by prohibiting recyclers from accepting material from customers using identifiable shopping carts.

III. THE PROPOSED AMENDMENT IS UNCONSTITUTIONAL

A. Amendment Denies People Equal Protection of the Laws.

Constitutional principles of equal protection clearly prohibit governmental action which denies a person "equal protection of the laws." While many of the individuals using shopping carts in Oakland are members of minority and underprivileged classes subject to long recognized Constitutional protections, courts have recently invalidated laws that intentionally and arbitrarily treat individuals differently even if they are not a member of a vulnerable group or class. (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562). The proposed Amendment targets individuals in Oakland that use shopping carts to carry their belongings. Everyone in Oakland, therefore, has equal access to recycling and to redeem their beverage containers except people using identifiable shopping carts. People strong enough to carry recyclables; people using motor vehicles, even if they may be stolen; and people using laundry carts and other buggies, whether they are following the law or breaking the law in another way, have access to recycle their beverage containers and receive their CRV refund. All except those using identifiable shopping carts.

Individuals using identifiable shopping carts can push their carts up to a street vender, buy a soda and pay the CRV on the beverage container. They can drink the soda on the streets of Oakland leaning against their shopping cart. But with this amendment, if they push their cart to a recycling center, they cannot get their CRV. They are not, therefore, being treated equally under the law. They are good enough to pay CRV but not good enough to get it back. The Amendment would elevate the CRV payment to a tax on those using shopping carts in Oakland, as they would be required to pay CRV but not receive its redemption.

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A Professional Law Corporation

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B. Amendment Violates Constitutional Principles of Substantive Due Process.

In addition to being a discriminatory law in violation of the equal protection clauses, the proposed Amendment violates Constitutional principles of Substantive Due Process. Courts have often struck down laws that, in view of existing conditions in the community and the physical characteristics of the area, do not have a real and substantive relation to the objects and purposes intended to be furthered. To the extent the proposed Amendment is targeted towards the prevention of shopping carts being stolen (which seems to be the intent given the Business & Professions code citations made in the analysis to the proposed Amendment), there is no rational basis to the restriction on recyclers. Those using identifiable shopping carts can do business or receive services at every other establishment in Oakland and to our knowledge, are not denied services by even the City itself when it provides outreach to the homeless. Therefore, even the City of Oakland is providing services to people using shopping carts. Yet there are no other restrictions on businesses in the City which prevent commerce or services with those using shopping carts. The ordinance is clearly discriminatory as applied to recyclers compared with every other business in the City.

While there seems to be no rational basis whatsoever to the rule when viewed in terms of shopping cart retrieval, even if the Amendment were to have some reasonable relation to a legitimate public purpose, it may still be held invalid where it is clear that its effects are contrary to the public welfare which far outweigh its benefits. (*Home Builders League of South Jersey, Inc. v. Berlin Tp.* (1979) 405 A. 2d 381; *Weitling v. Du Page County* (1962) 186 N.E.2d 291). There can be no doubt about the tremendous public importance placed on recycling in California as demonstrated in both the Beverage Container Act and the Integrated Waste Management Act. Even within the City of Oakland with its Zero Waste goals, the public policy to support recycling is clear. This Amendment does nothing to curb the use of shopping carts. These important environmental principles clearly outweigh any minimal benefit which may be derived from restricting recyclers from accepting material from those using shopping carts.

IV. CONCLUSION

For all of the reasons set forth above, the proposed Amendment should not be added to the Recycling Performance Standards.

Cordially,

Robert A. Bernheimer

MANUFACTURER RESPONSIBILITY

Recycling Costs/Ton *

Aluminum	\$545.03
Glass	\$100.30
#1 PET	\$504.48
#2 HDPE	\$528.68
#3 PVC	\$772.33
#4 LDPE	\$1,962.14
#5 PP	\$831.95
#6 PS	\$658.00
#7 OTHER	\$783.48
Bimetal	\$933.03

*2008 Costs with reasonable rate of return as published in Processing Fee Notice, Dec. 10, 2007

Recycler Scrap Values per Ton (3/08)

Aluminum	\$2,005.81
Glass	\$8.43
#1 PET	\$378.74
#2 HDPE	\$404.43
#3 PVC	\$0.00
#4 LDPE	\$0.00
#5 PP	(\$166.00)
#6 PS	(\$308.08)
#7 Other	(\$72.19)
Bimetal	(\$1.30)

Processing Fees per Container Sold*

Glass	\$0.00240
#1 PET	\$0.00072
#2 HDPE	\$0.00216
#3 PVC	\$0.02505
#4 LDPE	\$0.01691
#5 PP	\$0.09013
#6 PS	\$0.00507
#7 Other	\$0.04217
Bimetal	\$0.04825

* Rates effective January 1, 2008

Total 2007 Processing Fees Paid by Manufacturers (Millions)

Glass	\$0.000
#1 PET	\$0.000
#2 HDPE	\$0.000
#3 PVC	\$0.037
#4 LDPE	\$0.147
#5 PP	\$0.041
#6 PS	\$0.771
#7 Other	\$2.306
Bimetal	\$1.289
Total PF Payment	\$4.591

Total 2007 Processing Payments (Millions)

Total	
Glass	\$49.467
#1 PET	\$43.180
#2 HDPE	\$8.196
#3 PVC	\$0.008
#4 LDPE	\$0.000
#5 PP	\$0.003
#6 PS	\$0.008
#7 Other	\$0.250
Bimetal	\$0.157
Total	\$101.271

2008 Processing Payments per Ton*

Glass	\$94.52
#1 PET	\$197.68
#2 HDPE	\$216.33
#3 PVC	\$755.49
#4 LDPE	\$1,919.68
#5 PP	\$831.95
#6 PS	\$871.41
#7 Other	\$687.68
Bimetal	\$920.47

* Rates effective January 1, 2008

ELASTIC RESIN CODE DESCRIPTION	(polyethylene terephthalate)	(polypropylene)
	(high density polyethylene)	(polystyrene)
	(vinyl/polyvinyl chloride)	(includes multilayer)
	(low density polyethylene)	(for three layers of PETE)
		<small>A "7" shall appear below the resin abbreviation when the resin is composed of more than one resin or resin type.</small>

CONTAINERS PER POUND*

Material	CRV	Non-CRV	Refund Value
Aluminum	29.3	33.53	\$1.56
Glass	1.92	0.92	\$0.105
#1 PET	14.2	6.01	\$0.90
#2 HDPE	6.0	4.83	\$0.52
#3 PVC	9.8	N/A	\$0.56
#4 LDPE	36.9	N/A	\$1.85
#5 PP	3.0	N/A	\$0.30
#6 PS	55.9	N/A	\$2.80
#7 Other	5.3	N/A	\$0.39
Bimetal	6.2	N/A	\$0.32

* Rates effective January 1, 2008

What is currently in the Beverage Container Recycling Program

- Beer and other malt beverages
- Wine coolers and distilled spirit coolers
- Carbonated water, including soda and carbonated mineral waters
- Carbonated soft drinks
- Non-carbonated waters
- Non-carbonated soft drinks and "sport" drinks
- Non-carbonated fruit drinks that contain any percentage of fruit juice (excluding 100% fruit juice in 46 oz. or larger containers)
- Coffee and tea drinks
- Carbonated fruit drinks
- Vegetable juice in beverage containers of 16 ounces or less

Information accurate as of 5/28/2008. Values shown may change over time. Due to rounding, figures may not add to 100%.



California Resources Agency
Department of Conservation
Division of Recycling
www.conservation.ca.gov

California's Beverage Container Recycling & Litter Reduction Program

FACT SHEET

Updated 5/28/08

In 2007, Californians recycled an average of 40,378,222 beverage containers each day. This totals 14.7 billion beverage containers for the year. By recycling these beverage containers, California recyclers saved resources and reduced greenhouse gas emissions equivalent to 900,000 MTCE. This is equivalent to reducing oil consumption by 6.6 million barrels or removing 663,000 passenger cars from our roadways for a year.

SALES & RETURNS

Calendar Year 2007 (Millions)

Material	Sales	Returns
Aluminum	9,613.05	7,616.88
Glass	3,489.11	2,330.77
#1 PET	8,318.70	4,526.82
#2 HDPE	380.60	256.71
#3 PVC	0.75	0.11
#4 LDPE	6.89	0.01
#5 PP	2.21	0.08
#6 PS	34.00	0.39
#7 Other	40.37	2.58
Bimetal	38.94	3.70
All Materials	21,924.62	14,738.05

RECYCLING RATES

Calendar Years

Material	2005	2006	2007
Aluminum	73%	72%	79%
Glass	58%	59%	67%
#1 PET	46%	47%	54%
#2 HDPE	51%	59%	67%
#3 PVC	6%	19%	14%
#4 LDPE	0%	0%	0%
#5 PP	1%	2%	3%
#6 PS	1%	1%	1%
#7 Other	6%	4%	6%
Bimetal	7%	8%	9%
All Materials	61%	60%	67%

PROGRAM HISTORY

- AB 2020 (Margolin), authorizing legislation, signed 9/28/86
- Distributor labeling requirements and redemption payments began 9/1/87
- Dealer signage requirements and consumer redemptions began 10/1/87
- 52 Bills enacted since 1987, including:
 - SB 1221 (Hart), 1989: Two-for-a-nickel
 - AB 2622 (Eastlin), 1990: Glass container minimum content
 - AB 1340 (Eastlin), 1991: Fiberglass minimum content.
 - AB 87 (Sher), 1992: Processing fees, handling fees
 - SB 1178 (O'Connell, Sher), 1995: Processing fees, handling fees

- SB 1 (Sher), 1999: Extended SB 1178 for a year
- SB 332 (Sher), 2000: Added new containers, created and expanded recycling-related expenditure programs
- SB 1906 (Sher), 2001: Clarified scope of the recycling and litter reduction program, amended enforcement capabilities of the program
- SB 528 (Sher), 2001: Clarified predatory pricing provisions and enhanced the enforcement authority of the Division of Recycling
- AB 28 (Jackson), 2004: Increased CRV, revised processing fees and payments, established the Market Development and Expansion Grant Program and the recycling Infrastructure loan guarantee program
- AB 3056 (Committee on Natural Resources), 2006: Increased CRV, reduced processing fee for 2007, increased administrative payments to beverage distributors, established aluminum, glass and plastic Quality Incentive Payments, extended the Market Development and Expansion Grant Program, established additional grant programs, revised convenience zone definition in rural areas, increased Handling Fees appropriation and, effective July 1, 2008, based Handling Fees on allowable cost surveys
- SB1021 (Padilla) 2007: Provides for grants for source separated beverage container recycling receptacles in multifamily housing

MULTIFAMILY BEVERAGE CONTAINER RECYCLING GRANT

Fiscal Year 07/08

Total Grant Award Amounts (Millions)	\$5.0
Grant Recipients	12
Applicants, Phase 1	12

MARKET DEVELOPMENT AND EXPANSION GRANTS

Calendar Year 2007

Total Grant Award Amounts (Millions)	\$20
Grant Recipients	19
Applicants, Phase 1 (Concept Proposal)	92

BEVERAGE CONTAINER RECYCLING GRANTS

Fiscal Year 07/08

Total Grant Award Amounts (Millions)	\$1.5
Grant Recipients	9
Applicants, Phase 1 (Concept Proposal)	118

COMMUNITY CONSERVATION CORPS GRANTS

Fiscal Year 07/08

Total Funding Provided (Millions)	\$18.4
Applicants	12

FUNDS PAID TO CITIES AND COUNTIES

Fiscal Year 07/08

Total Funds Awarded (Millions)	\$10.2
Total Funds Available (Millions)	\$10.5
Eligible Cities and Counties	535
Number of Recipients	498

CBCRF ACTIVITY

Fiscal Year 07/08

Estimated Revenues (Millions)	
CRV In	\$1,197.7
Interest	19.2

Estimated Expenditures

CRV Out	\$915.9
Processing Fee Offset	90.5
DOR Administration	50.6
Handling Fees	35.0
Curbsides/Neighborhood Dropoff Supplemental Payments	15.0
Payments to Cities and Counties	10.5
Public Education	5.0
Market Development and Expansion Grants	20.0
Community Conservation Corps Grants	18.4
Community Outreach Grants	1.5
Quality Incentive Payment Program	15.0
State Parks Recycling and Litter Reduction	5.0
Multi-Family/Low Income Recycling	5.0
Plastic Market Development Payments	5.0
Recycler Incentive Program	10.0
SB1021	0.2
Local Conservation Corp Grants (one time)	20.0
State Operations	4.0

PROGRAM PARTICIPANTS 4/8/08

Manufacturers & Beverage Distributors

Beverage Manufacturers (BM)	1,283
Distributors (DS)	1,670
Certified or Registered Fiscal Year 4/28/08	
Processors (PR)	166
Buyback Centers (RC)	2,097
Curbside (CS)	565
Collection/Dropoff (CP/DP)	175
Community Service (SP)	99

PARTICIPANT SHARES*

Calendar Year 2007 (% Redemption Weight)

TYPE	CRV%	AL%	GL%	P1%	P2%
Traditional RCs	52	59	44	48	38
Supermarket					
Sited Handling Fee RCs	26	28	19	27	19
Supermarket Sited					
Non-Handling Fee RCs	6	6	6	6	10
Curbside					
Programs	12	5	27	15	28
CP/DP/SP	3	2	3	4	5

* Due to rounding, figures may not total to 100%.

CONVENIENCE ZONE RECYCLERS

Calendar Year 2007

Average Number of Handling Fee Sites/Month	1,236
Average Number of Handling Fee Sites Funded/Month	1,163
Average Handling Fee/Month/Site	\$2,206

AUDITS, ENFORCEMENTS & INSPECTIONS

Calendar Year 2007

Compliance Audits Completed	186
Audit Findings (Millions)	\$6.7
Investigations Completed	30
Late Reporting Recorded	167
Recycler Inspections Completed	2,473
Notices of Noncompliance Issued	824
Notices of Violation Issued	223
Dealer Inspections Completed	5,640
Notices of Noncompliance Issued	272
Notices of Violation Issued	17