

ORDINANCE NO. 2026-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CHAPTER 12.62 (TEMPORARY STREET CLOSURE) AND CHAPTER 12.63 (SOLID WASTE MANAGEMENT) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO SOLID WASTE HAULING

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach ("City"), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California ("State");

WHEREAS, pursuant to Article XIII of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500, *et seq.*, the City is authorized to grant franchises via ordinance and enter into non-exclusive franchise agreements for commercial franchise services with private solid waste haulers;

WHEREAS, the City Council adopted a model non-exclusive commercial solid waste franchise agreement in 2017 that was updated in 2019 to meet the State's mandated solid waste diversion requirements for private solid waste haulers and, thereafter, entered into franchise agreements with a number of commercial solid waste franchise haulers;

WHEREAS, the California Integrated Waste Management Act of 1989 codified in the California Public Resources Code Section 40000, *et seq.*, as amended, mandates local governments divert solid waste, with the diversion requirements increasing from 25% when initially enacted to a goal of 50% in 2025;

WHEREAS, the City continues to consider ways to meet the State mandated diversion requirements;

WHEREAS, the Refuse Ad Hoc Advisory Committee is addressing ways to improve solid waste handling services, including meeting diversion requirements and facilitating legal operation of franchise hauling within the City; and

WHEREAS, the City Council desires to amend various provisions of Chapter 12.62 (Temporary Street Closure) and Chapter 12.63 (Solid Waste Management) of the NBMC as provided herein.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The provisions of Chapter 12.62 (Temporary Street Closure) and Chapter 12.63 (Solid Waste Management) of the NBMC, as set forth in Exhibit A, which is attached hereto and incorporated herein by reference, are hereby amended.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 27th day of January, 2026, and adopted on the 10th day of February, 2026, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

Lauren Kleiman, Mayor

ATTEST:

Lena Shumway, City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp, City Attorney

Attachment(s): Exhibit A – NBMC Chapters 12.62 and 12.63 Amendments

EXHIBIT A

NBMC CHAPTERS 12.62 AND 12.63 AMENDMENTS

1. Section 12.62.030 (Issuance of Permit) of the Newport Beach Municipal Code is amended to read as follows:

12.62.030 Issuance of Permit.

The City Manager may issue a permit if the City Manager determines that the granting of the application for the time and location requested will not unreasonably inconvenience the public, create unusual traffic or policing problems, or interfere with the peace and quiet of the surrounding neighborhood. If the City Manager determines not to issue a permit, the City Manager may either deny the same or refer the application to the City Council for a decision. If the City Manager decides to not issue the permit, the City Manager shall notify the applicant in writing, in the manner provided in Section 1.08.080, of the City Manager's decision to deny the permit and of the right to appeal said decision to the City Council or, if the matter is referred to the City Council, the date, time and location the application will be considered by the City Council.

If the City Manager issues a permit, the City Manager may impose such conditions in connection with its issuance as the City Manager deems reasonably necessary to ensure that the activity or special event will be conducted in an orderly manner with a minimum of inconvenience to the public. In addition, the City Manager may require that the permittee provide:

- A. Insurance, which types and amounts shall be determined by the Risk Manager.
- B. A security deposit to be used to reimburse the City for all extraordinary costs resulting from the activity or special event, such as placing and removing barricades, extra traffic control or police protection, and street sweeping and cleanup.

In addition to any fine or penalty that may be imposed pursuant to any provision of this Code, the City Manager may revoke a temporary street closure permit on the following grounds:

- 1. The permittee has ceased to meet the conditions of the permit;
- 2. The permit holder has provided false information or made a misrepresentation of a material fact in the application for the permit; or
- 3. The street closure permit activity creates a public nuisance that constitutes a health or safety hazard.

2. Section 12.62.040 (Appeal and Call for Review) of the Newport Beach Municipal Code is amended to read as follows:

12.62.040 Appeal and Call for Review.

If an applicant is aggrieved by any action or failure to act upon the part of the City Manager in issuing, failing to issue, suspending or revoking any permit under this chapter, such applicant may appeal to the City Council by filing with the City Clerk and paying the fee, established by resolution of the City Council within the timeframes specified below, a statement addressed to the City Council setting forth the facts and circumstances regarding the action or failure to act on the part of the City Manager. A member of the City Council, in their official capacity, may call for review any action of the City Manager in issuing, failing to issue, suspending, or revoking any permit under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk on a form provided by the Clerk. The City Clerk shall notify the applicant in writing by certified mail of the time and place set for hearing his appeal or call for review. The City Council, at its next regular meeting, held not less than five (5) days from the date on which such appeal or call for review shall have been filed with the City Clerk shall hear the applicant, the City Manager, and all relevant evidence. The City Council may sustain, overrule, or modify the action of the City Manager, and the decision of the City Council shall be final as to the City but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

The right to appeal or call an item for review regarding the denial, suspension or revocation of any permit required by this chapter shall terminate upon the expiration of fifteen (15) days following the notification of the applicant of the action of the City Manager and of the right to appeal such action to the City Council, which notice shall be served in the manner provided in Section 1.08.080.

3. The definitions of “Back-haul,” “Back hauler,” “Permitted processing facility,” “Self-hauler,” and “Small hauler” are added and definitions of “Collect,” “Commercial premises,” and “Container” are amended in Section 12.63.020 (Definitions) of the Newport Beach Municipal Code to read as follows:

“Back haul” means generating and transporting organic waste or retail waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66).

“Back hauler” means a person that back hauls.

“Collect” or “collection” means the operation of gathering together and/or transporting by means of a motor vehicle, trailer, or other means, any solid waste or recyclable material.

“Commercial premises” means all occupied real property in the City including, without limitation, multi-unit residential developments (including housing projects containing or consisting of four (4) or more attached units, whether apartment houses, condominiums, or mixed use projects, mixed use condominiums and rental housing, and which use commercial solid waste containers), wholesale or retail establishments, restaurants, other food establishments, bars, stores, shops, offices, mechanized manufacturing facilities, repair, research and development or professional services, sports or recreational facilities, industrial facilities, and construction and demolition sites; but shall not include property occupied by governmental agencies which do not consent to their

inclusion, and residential premises which receive solid waste collection services using residential solid waste containers.

“Container” means any vessel, tank, receptacle, box, bin, or cart used or intended to be used in the storage or collection of recyclable materials or in the process of recycling, or for the purpose of holding solid waste for storage or collection.

“Permitted processing facility” means a processing facility for diverted materials that holds all required Federal, State, and local permits and is operating in accordance with all permit requirements. A permitted processing facility includes, but is not limited to, materials recovery facilities (clean MRFs), mixed waste processing materials recovery facilities (dirty MRFs), composting facilities, anaerobic digestion facilities, publicly owned treatment works that accept food scraps and/or bioengineered feedstock for digestion, and processing facilities for construction and demolition debris.

“Self hauler” means a person that transports solid waste he or she has generated to a permitted processing facility. Self hauler also includes a person who back hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66).

“Small hauler” means a property owner or lessee that transports a de minimis amount, which is defined as not greater than fifty (50) cubic feet, of solid waste generated from a home or commercial renovation or construction project that does not require a building permit at the property owned or leased by him or her.

4. Section 12.63.080 (Required Findings) of the Newport Beach Municipal Code is amended to read as follows:

The City Council shall approve or conditionally approve an application for a franchise if, on the basis of the application, information materials, and testimony submitted, the City Council finds:

- A. That the application complies with this chapter;
- B. That the applicant or any person responsible for the management of the entity submitting the application has not within the past three years: (1) had a franchise for commercial solid waste handling services terminated by the City; and/or (2) received two (2) or more administrative citations within the past twelve (12) months for operating a solid waste enterprise within the City without a franchise;
- C. That awarding the franchise is in accord with the objectives of this chapter;
- D. That granting of such franchise will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the City or be materially detrimental to the public welfare or injurious to property or public improvements; and
- E. That the applicant has sufficient experience, equipment or recycling plan to safely comply with the requirements of the franchise agreement.

5. Section 12.63.150 (Exclusions) of the Newport Beach Municipal Code is amended to read as follows:

A. Gardener's Exclusion. No provision of this chapter shall prevent a gardener, tree trimmer or person providing a similar service from collecting yard waste, as an incidental portion of providing such gardening, tree trimming or similar service.

B. Commercial Recycler Exclusion for Source-Separated Recyclables. No provisions of this chapter shall prevent a recycling business from contracting to collect source-separated recyclables that are donated or sold to that recycling business by a commercial enterprise. "Source-separated recyclables" within the meaning of this subsection means recyclables which have been separated by a commercial business on its premises from solid waste for the purpose of sale or donation, which have not been mixed with or contain more than incidental or minimal solid waste, and which do not have a negative market value inclusive of collection, transportation, and disposition costs. This exclusion does not apply if the material collected is hauled for a net fee. Any recycling business qualifying for the exclusion shall meet all other requirements to operate in the City, including, but not limited to, a business license.

C. Back hauler, Self hauler, and Small hauler Exclusion. No provision of this chapter shall apply to a back hauler, self hauler, or small hauler that meets the strict definition as those terms are defined in Section 12.63.020 (Definitions). Under no circumstances may a back hauler, self hauler, or small hauler collect, transport or dispose of solid waste that has not been generated by them and/or does not legally belong to them. All solid waste must be handled, diverted and disposed of in a manner compliant with all Federal, State, or local laws related to solid waste handling and disposal. This exclusion shall not apply to any person that has obtained a building permit and is required to pay the demolition deposit under Section 15.02.085. Any person qualifying for this exclusion shall meet all other applicable requirements to operate in the City.

D. Capital Improvement Project Exclusion. The provisions of this chapter shall not apply to solid waste handling services on a Federal, County of Orange, State of California, or City capital improvement project provided that the contractor complies with all Federal, State, and local requirements related to handling and disposal of solid waste.