

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CUPERTINO MUNICIPAL CODE CHAPTER 6.24 (GARBAGE,
NON-ORGANIC RECYCLING AND ORGANIC WASTE RECYCLING
COLLECTION AND DISPOSAL)**

The City Council of the City of Cupertino finds that:

WHEREAS, the purposes of Chapter 6.24 of the Cupertino Municipal Code are, among other things, to describe the City Council's authority to award an exclusive franchise to a solid waste collector to perform solid waste collection service, and certain terms and conditions related to solid waste collection service; and

WHEREAS, the City Council has historically exercised its authority under Chapter 6.24 to award such as exclusive franchise to a solid waste collector, describing the terms and conditions for the award in a franchise agreement with the collector; and

WHEREAS, since the City last amended Chapter 6.24, there have been updates in state law and regulation, particularly in regard to expansion of the state mandate for certain businesses to participate in organic recycling, as well as refinements to the City's processes for managing solid waste collection and achieving its diversion goals; and

WHEREAS, this Ordinance makes revisions to Chapter 6.24 to: (a) clarify and confirm the City's role and responsibility for regulating the franchised solid waste collector and protecting Cupertino residents; (b) clarify and confirm the franchised solid waste collector's role and responsibility for collection of payments, including past due payments, from customers for services rendered by the solid waste collector; (c) better align the Municipal Code and the City's franchise agreement with the solid waste collector; (d) reflect recent updates in state law and regulation, particularly relating to the expansion of mandatory organics recycling by businesses; and (e) make minor amendments to the Code to achieve consistent use of defined terms, better organization and titling of existing provisions to better reflect the subject matter of the section, correct typographical errors, and similar.

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

SECTION 1: Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-

section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, “CEQA”) because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to activities which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

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INTRODUCED at a regular meeting of the Cupertino City Council on December 15, 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	_____ Date

**Attachment A – An Ordinance of the City of Cupertino Amending
Provisions of the City Municipal Code Relating to Solid Waste Collection Service**

SECTION 1. Section 6.24.010 “Purpose of Chapter”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.010 Purpose of Chapter.

A. This chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino.

B. The City is required to comply with the applicable provisions of the California Integrated Waste Management Act (AB 939 or the "Act"), as amended, which is codified in California Public Resources Code beginning at section 40000. The Act requires that by and after January 1, 2000, fifty percent (50%) of the solid waste generated must be diverted through some source reduction, recycling, and composting activities.

C. Assembly Bill 1826, which amended the Act in 2014, to impose certain organic waste recycling requirements, mandates that by April 1, 2016, a business that generates eight (8) cubic yards or more of organic waste per week must arrange for recycling services, specifically for organic waste; by January 1, 2017, a business that generates four (4) cubic yards or more of organic waste per week must arrange for recycling services specifically for organic waste; by January 1, 2019, a business that generates four (4) or more cubic yards of commercial solid waste per week, must arrange for recycling services specifically for organic waste; by January 1, 2020, if the State determines that the statewide disposal of organic waste has not been reduced to fifty percent (50%) of the level of disposal during 2014, a business that generates two (2) cubic yards or more per week of commercial solid waste must arrange for the organic waste recycling, unless the State determined that this requirement will not result in significant additional reductions of organics disposal. In September 2020, the Department of Resources Recycling and Recovery (CalRecycle) implemented the authority under Assembly Bill 1826 to reduce the threshold to two (2) cubic yards of solid waste generated by covered businesses.

D. The City may adopt, implement, and enforce a local organic waste recycling requirement that is more stringent or comprehensive than State law.

SECTION 2. Section 6.24.020 “Definitions”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Business" means a commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit entity or non-profit entity, or a multi-family residential dwelling with five (5) or more dwellings.
2. "Business Structure" means a building or buildings within a property occupied by one or more businesses.
3. "City" means and includes all the territory lying within the municipal boundaries of the City of Cupertino as presently existing, plus all territory which may be added thereto during the effective term of the ordinance codified herein.
4. "Collection station" means the location at which containers of solid waste, recyclables and organic waste are placed for collection by the solid waste collector. For businesses, collection station is typically the garbage and recycling area enclosure. For multi-family units with less than five (5) residential dwellings and other residential structures, the collection station is typically the street side of the concrete curb immediately adjacent to the residence where curb and gutter exists or where no curb and gutter exists, the edge of asphalt immediately adjacent to the residence.
5. "Construction and demolition debris" or "C&D debris" means materials resulting from the construction, remodeling, or demolition of buildings and other structures. "Construction and demolition debris" includes, but is not limited to, concrete, asphalt, rock and dirt related to construction, remodeling, repair, or demolition operations and is subject to the provisions of [Chapter 16.72](#).
6. "Debris box service" means collection service in containers without compaction that have a capacity of eight (8) cubic yards or more. Debris boxes may be used for the collection of recyclable and organic waste, or garbage, and may be used for construction and/or demolition debris that may or may not be intended for full or partial recycling or other waste diversion.
7. "Delinquent" means a failure of the recipient of solid waste collection service to pay when due all charges owed to the solid waste collector for solid waste collection service rendered or to be rendered.
8. "Director" means the Director of Public Works and his/her duly authorized agents and representatives.
9. "Dwelling" means a residence, flat, duplex, apartment, townhouse, condominium or other facility used for housing one or more persons.
10. "Equipment" means a debris box or debris bin and vehicles used to transport debris boxes or bins.
11. "Finance Director" means the Finance Director and his/her duly authorized agents and representatives.

12. "Food Waste" means unused and discarded solid food products/scraps including, but not limited to, vegetables, fruit, meat, fish, shells, bones, cheese, bread, paper-based tea bags and coffee grounds. Food waste is an organic waste.

13. "Garbage" means all materials, substances or objects that are discarded, including but not restricted to, materials, substances or objects commonly referred to as "trash," "garbage," "refuse" and "rubbish" that are produced, generated or accumulated by all residential, commercial, industrial, institutional, municipal, agricultural and other inhabitants, premises and activities within the City, the collection of which is regulated through the franchise agreement existing between the City and the authorized solid waste collector; provided, however, that "garbage" does not include (a) hazardous materials, (b) recyclable materials, (c) organic materials, (d) clear plastic bags when used to contain organic materials to be recycled, (e) construction and demolition debris, (f) biomedical waste, (g) ash, and (h) sewage and other highly diluted water-carried materials or substances and those in gaseous form.

14. "Hazardous materials" means any or combination of materials which because of its quantity, concentration, or physical, chemical or infectious characteristics may either: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous materials includes, but is not limited to, hazardous wastes as defined under California or United States law or any regulations promulgated pursuant to such laws, and all toxic, radioactive, biologically infectious, explosive or flammable waste materials, including any material defined in Section [9.12.020](#) of the Cupertino City Code for which a hazardous materials storage permit is required.

15. "Litter" means but is not limited to, plastic, paper, cigarette butts, floor sweepings, trash, rubbish, food, cloth, metal, recyclable material, or waste matter of whatever character.

16. "Multi-unit dwelling" or "multi-family dwelling" means any premises, excluding a hotel, motel, or lodging house, used for residential purposes containing five (5) dwelling units or more, irrespective of whether the residency is transient, temporary or permanent.

17. "Non-Organic Recyclables" or "non-organic recyclable material" mean those materials that can be returned to economic use as raw materials for new, reused or reconstituted products, which prior to collection are separated by the generator from other material treated as solid waste. Examples of Non-Organic Recyclables include, but are not limited to: newspaper, cans, corrugated cardboard, glass, certain types of plastic, metals, wood and automobile oil. "Mixed non-organic recyclables" means more than one type of non-organic recyclable material commingled in a bin, debris box, compactor or other type of container. This material includes, but is not limited to wood, paper, plastic, metals, glass, and other recyclable materials other than organic waste. The material must not contain more than 5% by volume garbage and organic waste.

18. "Nonresidential premises" means all premises except residential premises, including but not restricted to premises used for industrial, commercial, administrative and professional offices, public and quasi-public buildings, utility and transportation.

19. "Occupancy"; "occupied": Premises are "occupied" when a person or persons take or hold possession of the premises for permanent or temporary use. For the purposes of

determining whether a premises is occupied during periods when solid waste collection service is made available to such premises, occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods.

20. "Organic waste" means organic materials, including but not limited to, materials generated from tree trimming, shrubbery pruning, vegetative garden wastes, dead plants, weeds, leaves, grass clippings, food waste, and non-food vegetative matter, soiled paper and cardboard and waxed cardboard that decompose biologically. The material must not contain in excess of 5% by volume garbage or non-organic recyclable materials. Except in residential dwellings, if the material is placed in a bag, the bag must only be clear plastic.

21. "Owner" means the holder or holders of legal title to the real property constituting the premises to which solid waste collection service is provided.

22. "Person" includes any person, firm, association, organization, partnership, business trust, joint venture, corporation, or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.

23. "Premises" means any land, building or structure, or portion thereof, within the City where any solid waste is produced, kept, deposited, placed or accumulated.

24. "Residential premises" means any single-unit dwelling or multiple-unit dwelling.

25. "Single-stream recycling" means a recycling program in which generators place multiple types of recoverable materials in a single container that is designated specifically for recyclables and is taken to a material recovery facility for processing.

26. "Single-unit dwelling" means one or more rooms and a single kitchen, designed for occupancy by one family for residential purposes. Each dwelling unit within a condominium project, duplex, townhouse project or apartment, and each second unit located within a single-family residential zoning district, shall constitute a separate single-unit dwelling to which solid waste collection service is provided, unless the owner or occupants thereof arrange for solid waste collection service to be provided to all dwelling units upon the premises at commercial rates.

27. "Solid waste" means all items of solid waste including, but not limited to garbage, non-organic recyclables, organic waste and hazardous materials eligible for collection.

28. "Solid waste collector" means any person or entity authorized by the franchise agreement between the Franchisee and the City, in accordance with Section [6.24.120](#) of this chapter, to collect, receive, carry, transport, process and dispose of any garbage, non-organic recyclables, organics and hazardous materials eligible for collection, produced, kept or accumulated within the City.

29. "Solid waste collection service" means the collection, transportation and disposal of garbage, organic materials, non-organic recyclables and hazardous materials eligible for collection by an authorized solid waste collector.

30. "Source Separated Recyclables" means any recyclables that, prior to collection, are or have been separated or segregated by their generator as to type or category of source material and are or have been placed into separate containers according to type or category, i.e. all metal is separated from other recyclables and placed in its own separate container or separate debris box.

31. "Tenant" means any person or persons, other than the owner, occupying or in possession of a premises.

SECTION 3. Section 6.24.030 “Mandatory Solid Waste Collection Service – Owner Responsibility”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.030 Mandatory Solid Waste Collection Service – Owner Responsibility.

A. The owner of each occupied residential or nonresidential premises shall subscribe to and pay for at least the minimum level of solid waste collection service made available to that premises by the solid waste collector, as specified in the franchise agreement between the city and the solid waste collector executed pursuant to Section 6.24.120 of this Chapter or obtain an exemption under Section 6.24.031 below. The owner of each occupied residential or nonresidential premises shall subscribe to and pay for a level of service sufficient to provide for the collection of all solid waste generated on the premises. Customers at non-residential premises must subscribe to services on a regular weekly basis sufficient to prevent container or bin overages and, where necessary, to extra services to prevent overages. Nonresidential customers' solid waste, if bagged, shall be in clear plastic bags.

B. The charges for solid waste collection service rendered or made available shall be paid for all periods of time during which the premises are occupied, regardless of whether or not the owner or tenant has any solid waste to be collected on any particular collection date during such occupancy. Occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods. Nothing in this section is intended to prevent an arrangement, or the continuance of an arrangement, under which payments for solid waste collection service are made by a tenant or tenants, or any agent or other person, on behalf of the owner. However, any such arrangement will not affect the solid waste collection service recipient's obligation to pay for solid waste collection service as provided herein.

SECTION 4. Section 6.24.035 “Mandatory Non-Organic Recycling for Businesses”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.035 Mandatory Non-Organic Recycling for Businesses.

A. The owner or tenant designees of multi-family dwelling premises are required to subscribe to and maintain mandatory non-organic residential recycling services for each individual household in the dwelling. An exception may be granted at the discretion of the Director if it is determined there is not sufficient storage space for the containers at the multi-family dwelling premises.

B. All businesses are required to subscribe to and maintain mandatory non-organic recycling services if such businesses generate greater than or equal to four (4) cubic yards of solid waste per week. If the solid waste collector transports containers of solid waste generated by the business to a material recovery facility for the purposes of mixed waste processing, thereby separating non-organic recyclables from the mixed waste and recycling the non-organic recyclables, the business will be deemed to be subscribing to non-organic recycling services.

C. The disposal of garbage in containers designated for organic waste recycling or processing or for source separated or single-stream recycling is prohibited.

D. The solid waste collector is prohibited from providing solid waste service to businesses subject to the mandatory non-organic recycling requirements without providing a non-organic recycling program that includes the collection of a container no less than thirty-two (32) gallon capacity, provided by the solid waste collector, at least one (1) time per week. The only exceptions to this requirement are the following:

1. The solid waste collector provides a mixed waste processing program to the business in which solid waste containers are taken to a material recovery facility for processing to remove non-organic recyclable materials.
2. The solid waste collector may verify the owner or tenant designee has been granted an exception to the mandatory non-organic recycling program from the Director.

SECTION 5. Section 6.24.037 “Mandatory Organic Recycling for Business Structures”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.037 Mandatory Organic Recycling for Business Structures.

Phased in mandatory recycling of organic waste is required of businesses generating the quantities of organic material specified in this section. Exceptions to these requirements may be granted by the Director, if any aspect of the requirements prove to be unfeasible due to space constraints as allowed in [Chapter 9.16](#).

A. On and after September 1, 2015, a business or business structure generating eight (8) cubic yards or more of organic waste per week are required to subscribe to and maintain organic material (including food waste) recycling services for each structure. Multi-family dwellings are exempted.

B. On and after January 20, 2016, a business or business structure generating three (3) cubic yards or more of organic waste per week or generating a solid waste stream that is comprised of 25% or more organic food waste material are required to subscribe to and maintain organic material (including food waste) recycling services. Multi-family dwellings are exempted.

C. (1) On and after July 1, 2018, a business or business structure generating four (4) cubic yards or more of solid waste per week is required to subscribe to and maintain organic material (including food waste) recycling services for each business or individual household in the multi-family dwelling. (2) On and after January 1, 2021, a business or business structure generating two (2) cubic yards or more of solid waste per week is required to subscribe to and maintain organic material (including food waste) recycling services for each business or individual household in the multi-family dwelling, unless otherwise provided in state law.

D. All business structures are required to maintain mandatory yard waste composting services. These services are to be provided by the solid waste collector or by the contractor retained by the business to perform grounds maintenance services. If these services are not provided by the solid waste collector, the responsible party is required to provide satisfactory proof to the City of the quantity of yard waste being processed and proof that yard waste is being processed as compost.

E. All business structures that either backhaul non-organic recyclables or organic material out of the City or donate non-organic recyclables or organic material is required to provide satisfactory proof to the City of the quantity of non-organic recyclables or organic materials being backhauled and/or donated.

F. The City may direct the solid waste collector to audit individual solid waste streams to determine applicability and compliance with this section. When solid waste stream audits are conducted, businesses are to cooperate and will receive a copy of the audit findings.

G. The disposal of garbage in containers designated for organic material processing or for source separated single-stream recycling is prohibited. Organic waste that is put into an organic waste container for collection by the solid waste collector must be substantially free from garbage and recyclable materials (less than 5% by volume). Organic waste, if bagged, shall be in clear plastic bags. Except for residential dwellings, all bags other than clear plastic bags, are prohibited in containers that have been set out for collection.

1. The owner and/or tenant designee will be notified by the solid waste collector if its organics waste container is contaminated or if the material in their container is bagged in any prohibited bag(s). When the owner and/or tenant designee removes the contaminants and/or the prohibited bags, the franchise solid waste collector will return to the business structure to service the container and will charge the business structure a "Return Fee" as adopted by City resolution.

2. If the owner and/or tenant designee does not remove the contaminants and/or the prohibited bag(s) from the organic waste container, the organic waste container will be serviced and owner and/or tenant designee will be charged for an "Extra P/U" (extra garbage pick-up) and a "Return Fee" in addition to the regular charges that apply to the level of service subscribed to by the owner and/or tenant designee. The extra garbage pick-up charge is based on the size of the container and the City's established approved rates.

H. The solid waste collector is prohibited from providing solid waste service to a business structure subject to the organic waste recycling requirements without providing an organic waste recycling program that includes the collection of a container no less than thirty-two (32) gallon capacity, provided by the hauler, at least one time per week. The only exceptions to this requirement are the following:

1. Yard waste removal and compost processing services are not provided by the solid waste collector; and
2. Business or business structure provides satisfactory written proof regarding the quantity of yard waste being processed and written proof that yard waste is being processed as compost.

SECTION 6. Section 6.24.080 “Inappropriate Containers”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.080 Inappropriate Containers.

It is the duty of the authorized solid waste collector, unless otherwise allowed under the current franchise agreement, to provide the bins, boxes and containers. The use of garbage, organic materials and non-organic recycling containers which do not meet the standards set forth in Section 6.24.070 of this chapter shall be subject to regulations prescribed by the Director. The solid waste collector may propose for City approval additional charges to be paid the solid waste collector for the collecting and transporting of the inappropriate containers or waste contained therein.

SECTION 7. Section 6.24.120 “Franchise Granting Authority”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.120 Franchise Granting Authority.

The City Council may award an exclusive franchise to any person or entity the Council believes is qualified to perform solid waste collection service. Such franchise agreement shall require the solid waste collector to render service to all residential and nonresidential premises within the City in accordance with the provisions of this chapter and in conformity with such regulations as may be adopted by the Director with the approval of the City Council. Additional terms of such franchise agreement shall not conflict with any of the provisions of this chapter, Chapter 9.16 or Chapter 10.48.

SECTION 8. Section 6.24.150 “Charges for Garbage Collection Service”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby re-titled and amended to read as follows:

6.24.150 Charges for Solid Waste Collection Service.

The City Council reserves the right to establish by resolution a maximum schedule of rates and charges for all levels of solid waste collection services to be rendered by the solid waste collector, who shall then have authority to collect such rates and charges. The schedule may be changed from time to time in the manner prescribed by the franchise agreement between the City and the solid waste collector.

SECTION 9. Section 6.24.160 “Failure to Pay for Garbage Collection Service”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby re-titled and amended to read as follows:

6.24.160 Entitlement to Collect for Solid Waste Collection Service.

The solid waste collector shall be entitled to payment from the recipient of solid waste collection service for any services rendered or to be rendered by the solid waste collector. Upon failure to make such payment, the means of collecting delinquent charges shall be in accordance with the procedures set forth in Sections 6.24.170 through 6.24.180 of this Chapter.

SECTION 10. Section 6.24.170 “Notification of Delinquency”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.170 Notification of Delinquency.

If a bill for solid waste collection service becomes delinquent, the solid waste collector shall send or deliver notice of delinquency in the form and manner set forth in the franchise agreement, and indicating the amount owed for solid waste collection service, including the amount of late charges that may be imposed thereon, and advising that failure to pay the same will result in increased penalties and that the solid waste collector may pursue other remedies consistent with law regulating the collection of debts.

SECTION 11. Section 6.24.180 “Assignment of Delinquent Account”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby re-titled and amended to read as follows:

6.24.180 Remedies for Delinquent Account.

If a bill for solid waste collection service remains delinquent for more than forty-five (45) days, and the solid waste collector has given notice as required herein, the solid waste collector shall be entitled to collect a late charge in such amount as set forth in the franchise agreement with the solid waste collector. In the event the bill for solid waste collection service, together with any late charge thereon, remains delinquent for more than ninety (90) days, and the solid waste collector has given notice as required herein, the solid waste collector may pursue any remedies consistent with the franchise agreement and law regulating the collection of debts for services rendered by the solid waste collector.