

**REGULAR**

**NUMBER: 48.20**

**TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTIONS 1-7 AND 9 OF TITLE V, CHAPTER 200 OF THE MILPITAS MUNICIPAL CODE, RELATING TO SOLID WASTE MANAGEMENT**

**HISTORY:** This ordinance was introduced (first reading) at a meeting of the City Council of the City of Milpitas on May 6, 2008, by motion by Councilmember Gomez, and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, 2008, upon motion of Councilmember\_\_\_\_\_. Said ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

**1. SECTION 1.40:** Title V, Chapter 200, Section 1.40 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-1.40 Solid Waste Service Design Requirements**

The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which shall accommodate the solid waste loading anticipated and which shall allow for efficient and safe waste removal or collection. Solid waste and recycling collection shall be accommodated on-site. The design shall comply with City requirements. (Ord. 48.19 (1), 5/1/07)

**2. SECTION 2.10:** Title V, Chapter 200, Section 2.10 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-2.10 Definitions**

The definitions contained in this Section shall govern the construction of this Chapter, unless the context otherwise requires.

- (a) Administrator. The “Administrator” means the City Manager or his or her designee.
- (b) Agent. The word “agent” means a person, designated by the owner, as responsible for procuring and maintaining solid waste, recyclables and yard trimmings collection services.
- (c) Authorized Contractor. The words “Authorized Contractor” means any person or persons, or the agents or employees thereof, with whom CITY shall have duly contracted as hereinafter provided, or to whom CITY shall have issued a permit, to collect, remove, transport, recycle or dispose of any or all solid waste, recyclables, or yard trimmings produced, kept or accumulated in the city.
- (d) Bin. ”Bin” means a Container with the capacity of approximately one to eight cubic yards, with a hinged lid, that is serviced by a front end-loading vehicle.
- (e) Cart(s): “Cart(s)” means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated collection vehicle. A Cart has a capacity of 32, 64 or 96 gallons.
- (f) City. The word “city” means and includes all the territory lying within the municipal boundaries of the City of Milpitas as presently existing together with all territory, which may be added thereto by annexation or otherwise. When capitalized, “CITY” means the City of Milpitas, a municipal corporation organized under the laws of the State of California, and its divisions, departments and agencies.
- (g) Centralized Collection Service. The phrase “centralized collection service” means the level of service provided to a multiple family development that provides a designated collection point for garbage and recycling services in roll-off compactors. It is the responsibility of the Property Management of the development to provide move-in and semi-annual recycling program information to multi-family residents.
- (h) Container(s). The word “Container(s)” means Front-end Loader Bins, Carts, Compactors, and Roll-off Containers.
- (i) Compactor. The word “Compactor” means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include two to four cubic yard Bin

Compactors serviced by front-end loader collection vehicles and 6 to 50 cubic yard Debris Box Compactors serviced by roll-off collection vehicles.

- (j) Curbside Service: The phrase “Curbside Service” means individual collection services for garbage, recycling and yard trimmings recycling as typically provided to single-family homes, duplexes, townhomes and mobile homes. See V-200-4.20 for specific set-out requirements for customers receiving Curbside Service.
- (k) Debris Box. The phrase “debris box” means an open-top Container with a capacity of 5 to 50 cubic yards and serviced by a roll-off collection vehicle
- (l) Front-end Loader Bin. The phrase “Front-end Loader Bin” means a container with the capacity of approximately one to eight cubic yards and with a hinged lid that is serviced by a front end-loading vehicle.
- (m) Hazardous Waste. The phrase “hazardous waste” means hazardous materials, as defined by Title V, Chapter 3 of the Milpitas Municipal Code, Hazardous Substances, as defined in 42 U.S.C. Section 9601 (14), Designated Wastes, as defined in Title 23, Chapter 15, Section 2522 of the California Code of Regulations, biohazardous and any other wastes which are not nonhazardous solid waste, as defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations.
- (n) Health Officer. The phrase “Health Officer” means the Santa Clara County Health Officer, or his or her designee(s) acting as the Health Officer of the CITY.
- (o) Medium and High Density Developments. “Medium and High Density Developments” are defined in the City’s General Plan as follows:
  - (1) Medium Density – “Medium Density” housing may include single-family attached and semi-attached houses and duplexes.
  - (2) High Density – “High Density” housing may include attached row houses to triplexes and four-plexes, stacked townhomes, and walk-up garden apartments.
  - (3) Very High Density – “Very High Density” housing may include attached row houses and townhouses to lofts and stacked flats with structured parking.
  - (4) Mixed Use – Mixed-use may include commercial offices, retail services, High Density residential, public, and quasi-public uses. Mixed use buildings can contain a combination of residential and commercial uses.
- (p) Non-putrescible Waste: The phrase “Non-putrescible Waste” means the component of the solid waste, which is not capable of being decomposed by micro-organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions.
- (q) Occupant. The word “occupant” means individual(s) occupying any premise, business establishment, industry, or other property for the purpose of residing at that location.
- (r) Person. The word “person” includes any individual, firm, association, organization, partnership, business trust, joint venture, corporation, company, state, county, city, or entity, whether acting as principal, agent or officer, servant or employee, for himself, herself, itself or for any other person. The word “person” includes the masculine, feminine, and plural forms.
- (s) Premises. The word “premises” means and includes any land, building or structure in the City where any solid waste, recyclables, or yard trimmings are produced, kept, deposited, placed or accumulated. The word “premises” extends to and includes, but is not limited to, any agricultural,

industrial, commercial or residential land, building or structure and without regard to ownership or use by a profit or nonprofit organization or institution.

- (t) **Producer.** The word “producer” means any person, firm or entity that creates or owns solid waste, recyclables, or yard trimmings or the materials from which they are derived, prior to collection or sale.
- (u) **Putrescible Waste:** “Putrescible Waste” means the component of the solid waste that is likely to become putrid. It includes but is not limited to wastes that contain organic materials such as food wastes or wastes from animal or vegetable origin.
- (v) **Recyclables.** The word “recyclables” or the phrase “recyclable materials” means materials which through collection, processing, sorting, cleansing, treating, reconstituting, resale or non-landfill disposition, may be returned to the economic mainstream in the form of raw material for new, reused or reconstituted products, including but not limited to material types such as newspapers, white paper, mixed paper, corrugated cardboard, glass, polyethylene terephthalate (“PET”), high-density polyethylene (“HDPE”), polystyrene foam, wood, bi-metal cans, aluminum cans, ferrous metals, non-ferrous metals, motor oil, or other materials as may be identified from time to time by CITY.
- (w) **Recycling.** The phrase “recycling” means the process of collecting, sorting, cleansing, treating or reconstituting solid waste materials, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products.
- (x) **Recycling Container.** The phrase “recycling container” means the container provided by an authorized contractor which shall only be used for the purpose of collecting recyclables and presenting them for collection to an authorized contractor.
- (y) **Roll-Off Container.** “Roll-Off Container” means an open top debris box for disposal of solid waste or recyclable materials serviced by a roll-off vehicle.
- (z) **Scrap Wood.** The phrase “scrap wood” means clean, unvarnished, unpainted, used wood.
- (aa) **Solid Waste.** The phrase “solid waste” means all putrescible and nonputrescible nonhazardous solid, semi-solid and liquid discarded material, including garbage, refuse, trash, paper, rubbish, ashes and other discarded solid and semi-solid material, which are:
  - (1) Not hazardous wastes or biohazardous wastes;
  - (2) Fall within the definition of nonhazardous solid waste, as that term is defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations;
  - (3) Are produced, generated or accumulated in the City or by CITY; and
  - (4) Are not designated as recyclable materials in an agreement between City and an authorized contractor or are not designated yard trimmings.

Notwithstanding any provision to the contrary, solid waste may include de minimis volumes or concentrations of hazardous substances (as that term is defined in 42 U.S.C. Section 9601(14)) remaining in the waste stream following implementation of a program for the safe collection, recycling, treatment and disposal of hazardous waste generated in households, in accordance with Sections 41500 and 41802 of the Public Resources Code.

- (ab) **Solid Waste Containers.** The phrase “solid waste containers” means all solid waste containers described in Section V-200-3.30.

- (ac) Stable Matter. The phrase “stable matter” means and includes all manure and other waste matter normally accumulated in and about a stable or any animal, livestock or poultry enclosure and resulting from the keeping of any animal, poultry or livestock.
- (ad) Yard Trimmings. The phrase “yard trimmings” means all materials, containing not less than ninety-five percent (95%) by weight-per-load plant debris, including grass clippings, leaves, prunings, weeds, branches, brush and tree trunks, as well as other forms of organic waste generated from landscapes and gardens.
- (ae) Yard Trimmings Container. The phrase “yard trimmings container” means an authorized contractor-supplied or approved wheeled cart with a capacity of up to ninety-six (96) gallons and used for the collection of yard trimmings. (Ord. 48.19 (2), 5/1/07; Ord. 48.14, 3/6/01; Ord. 48.12 (part), 12/5/95)

**3. SECTION 3.20:** Title V, Chapter 200, Section 3.20 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-3.20 Owner Responsible for Solid Waste, Recyclables, and Yard Trimmings Collection Service**

For utility accounts opened on or after June 2, 2006 serving residential premises with single-family curbside services connected to a common water meter installed to provide water to two or more residential units, the owners shall designate an agent who shall be responsible for payment to the City for water and curbside services on behalf of the owners. Nothing in this section is intended to prevent an arrangement, or the continuance of an existing arrangement, under which payments for collection service are made by a tenant or tenants, or any agent, on behalf of the owner. Any such arrangement, however, will not affect the owner’s obligation as provided herein.

**4. SECTION 3.30:** Title V, Chapter 200, Section 3.30 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-3.30 Solid Waste Containers Required, Description**

Any and all solid waste produced, kept or accumulated within or upon any premises in the City shall be placed without delay in solid waste containers described in this Section and shall be kept and maintained within such containers and upon such premises, until the contents thereof are disposed of in accordance with the provisions of this Chapter. Solid waste cans, plastic or polyethylene disposal bags, or authorized contractor-supplied or approved containers shall be authorized solid waste containers for use in the City and shall meet the standards for each such container as established in this Section.

Each container shall:

- (a) Be constructed of metal, plastic or other substantial materials;
- (b) Be of sufficient strength or rigidity to hold without collapsing all solid waste deposited and kept therein;
- (c) Be of sufficient strength and rigidity to prevent it from being broken or crushed under ordinary conditions of use;

- (d) Be leakproof and flyproof;
- (e) Be free of sharp, rough or jagged surfaces or edges likely to cause injury to persons lifting or handling the container;
- (f) Have a close-fitting cover.

In addition to the foregoing, containers supplied by the authorized contractor shall be of approximately ninety-six (96), sixty-four (64), or thirty-two (32) gallons in capacity and not weigh more than two hundred (200), one hundred fifty (150), and seventy-five (75) pounds, respectively, when fully loaded.

- (g) Be graffiti-free. Containers supplied by the authorized contractor shall be free of graffiti and all graffiti shall be removed promptly.
- (h) Be in good condition. Containers supplied by the authorized contractor shall:
  - (1) Be maintained by the same at a minimum level of good condition.
  - (2) Include identification as the property of the authorized contractor that includes a serial number, instruction for use and telephone number of the Authorized Contractor.

Containers of thirty-two (32) gallon capacity, whether supplied by the authorized contractor or not, shall, in addition to the requirements of subsections (a) through (h) above:

- (a) Be equipped with two attached handles or bales, one on each side of the container, of sufficient strength and size and so located to facilitate the lifting and handling of the container;
- (b) Be of such shape that it can be lifted and handled without unreasonable strain by one person; and
- (c) Not weigh more than seventy-five (75) pounds when fully loaded.

Plastic or polyethylene disposal bags with wire or plastic tie closure shall meet the requirements of paragraphs (a) through (e) of this subsection, and the National Sanitation Foundation standards for polyethylene refuse disposal bags as follows:

- (a) Dimensions. The bags shall have a minimum circumference of sixty (60) inches and a minimum inner dimension of thirty-seven (37) inches.
- (b) Strength. The bags, exclusive of packaging and ties, shall have a minimum weight of one hundred five (105) pounds per one thousand (1,000) bags.

Authorized contractor-supplied or approved solid waste containers with a capacity in excess of ninety (90) gallons and dimensions providing not less than one (1) cubic yard capacity shall meet the requirements of paragraphs (a) through (h) of this subsection.

**5. SECTION 3.31:** Title V, Chapter 200, Section 3.31 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-3.31 Location of Solid Waste, Recycling and/or Yard Trimmings Containers and Debris Boxes**

Each and every solid waste, recycling, and yard trimmings container(s) shall be placed, kept and maintained at all times in a side, or back yard, in an enclosure or elsewhere on the premises so as not to be visible from the street or accessible to animals and may not protrude past the front of any building for

multi-unit premises. This requirement does not apply during the twelve (12) hour period before or after a scheduled collection day. To comply with the Americans With Disabilities Act (“ADA”), customers requesting an exception to this provision will be considered on a case by case basis by the City Manager or his or her designee.

Except for those premises receiving service at the single unit curbside service level, as defined in the Agreement for the Collection and Disposal of Solid Waste between City and Allied Waste Services, dated September 2, 1986 and as amended thereafter, containers shall not be placed, kept, maintained or serviced in a public street, sidewalk or public easement of any kind or in the front yard setback without prior written consent of City. (Ord. 48.16 (part), 12/7/04; Ord. 48.13 (part), 6/1/99; Ord. 48.12 (part), 12/5/95)

**6. SECTION 3.32:** Title V, Chapter 200, Section 3.32 of the Milpitas Municipal Code is hereby amended to read as follows:

**V-200-3.32 Solid Waste, Recycling and Yard Trimmings Containers: Use and Maintenance**

Each unit of duplex or triplex shall be deemed to be a single unit for the purpose of this Chapter. Multiple dwelling units with four or more dwelling units on one parcel of property and subject to the multi-unit service level pursuant to the Agreement for the Collection and Disposal of Solid Waste between the City of Milpitas and Allied Waste Services, dated September 2, 1986 and as amended thereafter, shall be required to subscribe to solid waste container service. (Ord. 48.13 (part), 6/1/199; Ord. 48.12 (part), 12/5/95)

The City may prescribe mandatory garbage cart rental service for curbside services provided to Medium and High Density Development residences with limited setout space.

**7. SECTION 3.40:** Title V, Chapter 200, Section 3.40 of the Milpitas Municipal Code is hereby amended to read as follows:

**V-200-3.40 Minimum Allowable Collection Frequencies Disposal**

**Weekly Collection:** No more than one week’s accumulation of putrescible solid waste shall be kept or be permitted to remain upon any premises in the City. At least once each week all putrescible solid waste produced, kept or accumulated within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than one week’s accumulation of non-putrescible solid waste shall be kept in front-end loader bins. At least once each week all solid waste kept or accumulated in front-end loader bins within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

**30 Day Collection:** No more than thirty (30) day’s accumulation of non-putrescible solid waste, except recyclables, shall be kept or be permitted in compactors and debris boxes. At least once each thirty (30) days all such wastes kept or accumulated in compactors and debris boxes within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than thirty (30) day's accumulation of non-putrescible recyclables shall be kept or be permitted in front-end loader bins and debris boxes. At least once each thirty (30) days non-putrescible recyclables kept or accumulated in front-end loader bins and debris boxes within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

60-Day Collection: No more than sixty (60) day's accumulation of non-putrescible recyclables shall be kept or be permitted in compactors only. At least once each sixty (60) days non-putrescible recyclables kept or accumulated in compactors within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

**8. SECTION 3.61.** Title V, Chapter 200, Section 3.61 of the Milpitas Municipal Code is hereby amended to read as follows:

**V-200-3.61 Exemptions: Employees of Authorized Contractor; Hardship Variance**

Employees of an Authorized Contractor collecting solid waste, recyclables, or yard trimmings within the City, are exempt from the charges applicable for collection of solid waste, recyclables, or yard trimmings at the employee's primary place of residence, provided that this residence is located within the City, such employee provides proof of employment with the Authorized Contractor to the City on an annual basis, and employee receives curbside service.

The City Council may grant a variance from the provisions of Section V-200-3.20 or V-200-3.31 when the strict application of the Section creates an undue hardship. The following standards shall guide the City Council in the decision to grant or deny a variance request:

- (a) A variance is intended to alleviate a hardship imposed by the strict application of Section V-200-3.20 or V-200-3.31 and arising from the particular size, shape, topography, location, surrounding, or other condition of the property, not including economic hardship; and
- (b) An acceptable alternative method of disposal of solid waste must be used by the person owning, controlling, or maintaining the premises for which the variance is requested. Acceptable alternative methods of disposal shall not include disposal of solid waste at another premises or any disposal facility, whether or not such premises or disposal facility is located within the City. (Ord. 48.12 (part), 12/5/95)

**9. SECTION 4.20.** Title V, Chapter 200, Section 4.20 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-4.20 Delivery to the Authorized Contractor**

Additional Services Allowed for Disabled Customers: Solid waste, recyclables, and/or yard trimmings are to be delivered to an authorized contractor authorized to collect, dispose, and/or recycle same. The authorized contractor shall provide additional services as necessary to accommodate the needs of disabled residents, as defined in the Americans with Disabilities Act (ADA), at the same level of service provided and rate charged to nondisabled residents, including, but not limited to, collecting Solid Waste,

Recyclables and Yard Trimmings from containers stored in side or back yards, replacing empty containers in side or back yards and maintaining a TDD telephone line. The authorized contractor shall not be required to enter upon a private driveway or upon a private yard or enclosure for the purpose of collecting solid waste, recyclables, or yard trimmings, except to accommodate disabled residents as defined by the ADA.

**Curbside Service:** Solid waste accumulated in 32-gallon plastic or metal cans, or in 32-gallon plastic bags that are tied at the top, at residential premises with curbside services, shall be delivered to the authorized contractor by placing cans and/or bags alongside the street curb, but not in the street, in front of the premises wherein solid waste is produced and accumulated. Solid waste or recyclables accumulated in carts at residential premises with curbside services shall be delivered to the authorized contractor by placing the carts in the street with the wheels against the curb, two (2) feet from parked cars and mail boxes in front of the premises wherein solid waste and/or recyclables are produced and accumulated. In the event any Producer fails to return containers to their approved locations in a timely manner, Producer may be cited. After two citations within one year, the City may require the Producer to contract for a minimum of 12 months subscription to push and return services as provided by authorized contractor.

Yard trimmings shall be delivered to an authorized contractor in an authorized yard trimmings container by placing the cart in the roadway with the wheels adjacent to the curb. Tree prunings and branches shall be bundled with twine and cut in lengths no longer than three (3) feet long. Bundles shall be placed on the ground alongside the street curb adjacent to the yard trimmings container. Excess yard trimmings shall be placed in a clean thirty-two (32) gallon plastic or metal can provided by the resident alongside the street curb. Resident shall obtain a yard trimmings sticker from the authorized contractor and attach it to the container.

Single family curbside service weekly set out of used motor oil shall use only approved one-gallon jugs available at City of Milpitas fire stations and from the Authorized Contractors office.

**Non-Curbside Service:** Solid waste or recyclables accumulated in containers of thirty-two (32) gallons or larger capacity shall be delivered to the authorized contractor in a location on private property, consistent with the provisions of Section V-200-3.31, so as not to require the driver of the collection vehicle to dismount from the vehicle in order to service the containers. In the event that the driver is required to dismount due to the location of the bin, travel more than twenty-five (25) feet to the recycling bin, or because the producer does not want the collection vehicle on the producer's property, or if site conditions require the use of a scout truck, the producer shall be liable to the authorized contractor for an additional charge (called a "push and return charge") for pushing, collecting and returning the container(s). This charge shall also apply if the contractor must use non-standard equipment (scout truck).

The authorized contractor shall not be liable for any damage to private property in the course of collecting solid waste, recyclables, or yard trimmings or for delivery, maintenance, or removal of any container or debris box, except for the negligence of the authorized contractor, its agents, servants and employees.

**10. SECTION 5.11** Title V, Chapter 200, Section 5.11 of the Milpitas Municipal Code is hereby amended as follows:

### **V-200-5.11 Contract Provisions**

Each authorized contractor(s) providing residential and non-residential solid waste collection services shall comply with all licenses, permits, or written approval requirements of the City. Such written approval shall be contingent upon the authorized contractor's demonstrated capability to comply with these standards and use of equipment, which is safe and sanitary.

Any contract executed hereunder may provide that the authorized contractor(s) shall have the right to collect and receive the collection charges and fees established therein for the collection, transportation, removal, processing or disposal of solid waste, recyclables, and/or yard trimmings; provided, however, City may elect to collect and receive said collection charges and fees subject to the contract provisions concerning the remittance thereof to the authorized contractor. Said contract shall also provide for the compensation to be paid to City by the authorized contractor for the granting of the right to engage in said business. Nothing herein contained shall be deemed to limit the authority of the City to renew or extend a contract upon the expiration of any term thereof. The contract may contain such other terms, covenants and conditions as the City shall deem necessary or convenient for the efficient collection, transportation, removal, processing or disposal of solid waste, recyclables, and/or yard trimmings and the preservation and protection of the public health, safety, peace and welfare. (Ord. 48.19 (7), 5/1/07; Ord. 48.12 (part), 12/5/95)

**11. SECTION 6.11:** Title V, Chapter 200, Section 6.11 of the Milpitas Municipal Code is hereby amended as follows:

#### **V-200-6.11 Senior Rate**

Rates for residential premises with curbside collection for persons sixty-two (62) years or older and who are responsible for paying the water bill of the dwelling, upon application, shall be reduced upon such terms and conditions as are agreed to between City and authorized contractor. (Ord. 48.12 (part), 12/5/95)

**12. SECTION 7.51:** Title V, Chapter 200, Section 7.51 of the Milpitas Municipal Code is hereby amended as follows:

#### **V-200-7.51 Household Dump Day**

Pursuant to the terms of a contract between authorized contractor and City, Authorized Contractor shall provide at its solid waste disposal and compost facility site(s) nearest the City (or at such other site as may be agreed to between Authorized Contractor and the City) the privilege to any resident of the City to dispose of any non-putrescible waste free of charge subject to program criteria. Yard trimmings shall not be accepted on Household Dump Day after December 31, 1996 except as provided by City authorized permit. It is the intent of this section to allow free disposal and recycling of non-putrescible waste produced from residences within the City; it is not intended to authorize the free disposal of such materials generated from commercial or industrial sources or from sources outside the City.

Motor vehicle tires, auto batteries, mattresses and box springs, computer monitors and televisions, and appliances which contain refrigerants, including but not limited to refrigerators, chillers, freezers, ice-

makers and air-conditioning units will be accepted provided the resident bringing the item shall pay a charge to be determined by the City for removal of the refrigerant from the appliance and for the disposal and/or recycling of both the refrigerant and the appliance or for disposal or processing of the tires, auto batteries, mattresses and box springs, computer monitors and televisions.

Nothing herein contained, however, shall prohibit any person from collecting or transporting solid waste (in excess of the minimum collection for which City service is provided) produced, kept or accumulated at a residential premises owned or leased by such person in the City and disposing of the same outside City limits at a site approved by the Health Officer. (Ord. 48.13 (part), 6/1/99; 48.12 (part), 12/5/95)

**13. SECTION 9.21:** Title V, Chapter 200, Section 9.21 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-9.21 Notice of Violation Fees**

Violations of Chapter 200 Solid Waste Management shall be administered as infractions pursuant to Title 1, Chapter 1, Section 4.09, Penalty Provisions.

**14. SECTION 9.41:** Title V, Chapter 200, Section 9.41 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-9.41 Administrator's Decision**

After considering all of the testimony and evidence submitted at the administrative hearing, the administrator shall issue a written decision to uphold or dismiss the allegations contained in the notice of violation or other decision and shall list in the decision the reasons for that decision. The decision of the administrator shall be served on the applicable party pursuant to this Section. The decision of the administrator is final.

**15. SECTION 9.60:** Title V, Chapter 200, Section 9.60 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-9.60 Multiple Offenses**

Any violation which would otherwise be an infraction may be a misdemeanor if a defendant has been convicted of three (3) or more violations of this Chapter within the twelve (12) month period immediately preceding the commission of the offense, and such prior convictions are admitted by the defendant or are alleged in the accusatory pleading. For purposes of this Section, a bail forfeiture, payment of notice of violation fee and waiver of right to an administrative hearing at an administrative hearing shall be deemed to be a conviction of the offense charged.

**16. SECTION 9.21:** Title V, Chapter 200, Section 9.80 of the Milpitas Municipal Code is hereby amended as follows:

**V-200-9.80 Debt**

In addition to any other penalties herein provided, unpaid charges for the removal of solid waste, recyclables, or yard trimmings are a joint and several obligation of the producer thereof and the owner of the premises within which or upon which the same has been produced, and may be recovered in a civil action or a lien process, together with interest and costs. (Ord. 48.12 (part), 12/5/95)

**17. Severability**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance and all prior amendments, language and iterations of any related ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phrases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

**18. Publication and Effective Date**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force 30 days after the date of its passage. At least 5 days prior to City Council's adoption of this Ordinance, the City Clerk of the City of Milpitas shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California. Within 15 days after City Council's adoption of this Ordinance, the City Clerk shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the Office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California.

**REGULAR**

**NUMBER:** 196.9

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING SECTION 3.04 TO CHAPTER 213, TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO NOISE ABATEMENT

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 6, 2008 upon motion by Councilmember Gomez and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

**1. Section 3.** Chapter 213 of Title V of the Milpitas Municipal Code is hereby amended to add section 3.04 as follows:

3.04 The prohibition against making noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector after 6:00 am during the six-month period of September 1, 2008 through February 28, 2009.

**2. Severability**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance and all prior amendments, language and iterations of any related ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phrases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

**3. Publication and Effective Date**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force 30 days after the date of its passage. At least 5 days prior to City Council's adoption of this Ordinance, the City Clerk of the City of Milpitas shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California. Within 15 days after City Council's adoption of this Ordinance, the City Clerk shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the Office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California.