

Chapter xx

WASTE AND RECYCLING FACILITIES AND DEEMED APPROVED WASTE AND RECYCLING FACILITIES REGULATIONS

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xx.xxx.xxx Purpose

The purpose of this chapter is to list regulations pertaining to the establishment and conduct of waste and recycling facilities in the city under simplified headings.

This chapter requires land use permits for newly established waste and recycling facilities, confers deemed approved status for all existing permitted, conditionally permitted and legally nonconforming waste and recycling businesses, provides standards for the continued operation of waste and recycling facilities, sets forth grounds for the modification, revocation and termination of conditional use permits and deemed approved status for establishments violating this chapter, and provides a hearing process to review violations of the standards contained in this chapter in order to protect the general health safety, and welfare of the residents of the City of Pomona and to prevent nuisance activities where waste and recycling facilities exist.

Specific purposes for enacting this chapter are as follows:

- A. To protect residential, commercial, industrial and civic areas from the harmful effects attributable to the operation of waste and recycling facilities and minimize the adverse impacts of nonconforming and incompatible uses;
- B. To provide opportunities for waste and recycling facilities to operate in a mutually beneficial relationship to each other and to commercial and civic services;
- C. To provide mechanisms to address problems associated with waste and recycling facilities such as pollution, litter, graffiti, fires, escalated noise levels, water and soil contamination, rodents and pests, or obnoxious odors;
- D. To provide that waste and recycling facilities are not to become the source of undue public nuisances in the community;
- E. To provide for properly maintained waste and recycling facilities so that the secondary effects of negative impacts generated by these activities on the surrounding environment are mitigated;
- F. To monitor deemed approved establishments to ensure they do not substantially change in mode or character of operation; and
- G. To promote a healthy and safe business environment in the City of Pomona through appropriate and consistent land use regulations and to encourage the establishment of businesses that will benefit both the local economy and residents while not placing an undue strain on City resources or surrounding businesses and residents.

xx.xxx.xx Applicability

- A. The provisions of this chapter shall apply to the extent permissible under other laws to all waste and recycling facilities as defined in Section xx.xxx.xx (definitions section), located in the City of Pomona.
- B. Whenever any provision of the waste and recycling facilities and deemed approved waste and recycling facilities regulations, and any other provision of law, whether set forth in these regulations, in an existing conditional use permit, or in any other law, ordinance, or regulations of any kind, imposes overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in the waste and recycling facilities and deemed approved waste and recycling facilities regulations.

xx.xxx.xxx Definitions

“Automobile Dismantling Facility” means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

“Conditions of Approval” means all requirements that must be carried out by the owners engaged in the activity of: (1) a new waste and recycling facility to exercise a land use permit; or (2) an existing permitted, conditionally permitted, or legal nonconforming waste and recycling facility in order to comply with deemed approved performance standards and to retain its deemed approved status.

“Construction & Demolition Waste” means building materials and solid waste generated from construction and demolition activities, including, but not limited to, fully-cured asphalt, concrete, brick, rock, soil, lumber, gypsum wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting, fixtures, plastic pipe, metals, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction, deconstruction, demolition or land developments.

“Deemed Approved Activity” means any existing permitted or conditionally permitted waste and recycling facility activity (as defined in subsection xx below), or any legal nonconforming waste and recycling facility activity (as defined in subsection (xx) below). Such activity shall be considered a *Deemed Approved Activity* effective July 1, 2016 as long as it complies with the deemed approved performance standards set forth in Section xx.xxx.xx.

“Electronic Waste” means waste that includes any device powered by electricity (including batteries) that contains circuitry and is identified by the State of California as hazardous waste, whether whole or in fragments, including parts, components, or assemblies thereof. Examples include, but are not limited to: televisions, computers, central processing units, mobile computers (including notebooks, netbooks, tablets, and e-book readers), computer accessories (including input devices, webcams, speakers, data storage devices, servers, and monitors), televisions (including portable televisions and portable DVD players), video display devices (including digital picture frames and portable video devices), digital imaging devices (including

printers, copiers, facsimile machines, image scanners, and multifunction machines), television peripheral devices (including video cassette recorders, DVD players, video game systems, game controllers, signal converter boxes, and cable and satellite receivers), digital cameras and projectors, digital audio players, telephones and electronic communication equipment (including cellular phones and wireless internet communication devices), networking devices (including routers, network cards, modems, and hubs), audio equipment, portable video game systems, personal digital assistants, portable global positioning system navigation devices and microwave ovens.

“Electronic Waste Facility” means a business that accepts by donation or purchase, *“Electronic Waste”* from the general public, other recycling facilities, government agencies, and other business enterprises. The facility is used for the collection, sorting, and short-term storage of *“Electronic Waste.”*

“Enforcement Officer” means the city manager, or designee.

“Food Waste” means residuals, scraps, expired or discarded food originating from sale, storage, processing, preparation or dining practices, including but not limited to vegetables, fruits, grains, dairy products, meats, and the compostable packaging that may be commingled.

“Food Waste Facility” means a facility that accepts *Food waste* to reprocess into compost, or other products, including the use of power-driven processing equipment. Facilities which receive *Food waste* for shipment to another facility for reprocessing or composting are not included in this type of facility.

“Greenwaste” means organic waste generated by landscape, garden or agricultural operations consisting of lawn clippings, tree and shrub prunings, wood, and miscellaneous soil material. This is categorized as material which can be used to process into compost or wood chips for reuse.

“Greenwaste Facility” means a facility that accepts *Greenwaste* to reprocess into compost, wood chips, or other products, including the use of power-driven processing equipment. Facilities which receive *Greenwaste* for shipment to another facility for reprocessing or composting are not included in this type of facility. A *Greenwaste Facility* does not include the chipping, grinding, handling, processing or storage of construction and demolition debris.

“Hazardous waste” means any waste or combination of wastes which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious or irreversible illness or incapacity or any substance which poses a substantial hazardous threat to human health or the environment. Materials or mixture of wastes which have been defined as "hazardous substances" or "hazardous wastes" pursuant to the Resource Conservation and Recovery Act (RCRA), 42 USC 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), USC 96-1 et seq., as either may be amended from time to time, or any substance which may be defined by the state integrated waste management board. Should a discrepancy arise between two or more entities having jurisdiction in this matter as to the

definition set forth, the definition having the more encompassing meaning of the term "hazardous waste" shall prevail.

"Hazardous Waste Facility" means a facility, as defined in California Health and Safety Code Section 25117.1, that accepts hazardous wastes that are generated at another location (off-site) and serves more than one producer of hazardous waste.

"Illegal Activity" means an activity, which has been finally determined to be in noncompliance with local, state or federal laws, the conditions of any applicable permits, or the deemed approved provisions and performance standards in this chapter. Such an activity may lose its deemed approved status and if it does it shall no longer be considered a deemed approved activity.

"Legal Nonconforming Waste and Recycling Facility Activity" or "Legal Nonconforming Activity" means a waste or recycling facility activity which was a nonconforming use pursuant to Chapter xx.xxx.xx, and for which a valid City of Pomona business license had been issued and used in the exercise of the rights and privileges conferred by the license at a time immediately prior to July 1, 2016. A *"Legal Nonconforming Waste and Recycling Facility Activity" or "Legal Nonconforming Activity"* includes all waste and recycling facilities that are not in conformance with the regulations applicable to new waste and recycling facilities contained in this chapter, regardless of whether such activities were allowed as part of a conditional use permit granted prior to July 1, 2016. Such an activity shall be considered a deemed approved activity and shall no longer be considered a legal nonconforming activity.

"Medical Waste Facility" means any waste that falls under the jurisdiction of Pomona City Code Division 8 – Medical Waste Facilities, beginning with Section 62-901. Medical waste generators in the City of Pomona shall follow all local, state and federal codes and statues regarding the collection, storage, transportation and disposal of medical waste.

"Mixed Waste" means garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection.

"Modify" or "Modified" as used sections xx.xxx.xx, xx.xxx.xx, and xx.xxx.xx of this chapter means the expansion or increase in intensity or substantial change of a use, as these terms are used in Chapter xx.xxx of this title.

"Operational Standards" means regulations for the business practice activities and land use for locations with a conditional use permit issued in conformance with the regulations in this chapter on or after July 1, 2016 or those further requirements imposed on waste and recycling facilities to achieve the purposes of this chapter. *Operational Standards* constitute requirements which must be complied with by an establishment in order to maintain its conditional use permit or deemed approved status.

"Performance Standards" means regulations for the business practice activities and land use for locations with deemed approved status, in whole or in part, or those further requirements imposed to achieve the purposes of this chapter. *Performance Standards* constitute

requirements which must be complied with a by a waste and recycling facility in order to retain its deemed approved status.

“Permitted or Conditionally Permitted Waste and Recycling Facility Activity” or *“Permitted or Conditionally Permitted Activity”* means a waste and recycling facility activity which is a permitted or conditionally permitted activity pursuant to Chapter xx.xxx and other applicable provisions of the City of Pomona Municipal Code prior to July 1, 2016, and for which a City of Pomona business license has been issued and was used in the exercise of the rights and privileges conferred by the license at the time immediately prior to July 1, 2016. A *“Permitted or Conditionally Permitted Waste and Recycling Facility Activity”* or *“Permitted or Conditionally Permitted Activity”* includes all waste and recycling facility activities of any existing waste and recycling facility that are not in conformance with the regulations applicable to new waste and recycling facilities contained in this chapter, regardless of whether such activities were allowed as part of a conditional use permit or otherwise allowed as permissible activities associated with the facility’s permitted use, prior to July 1, 2016. To the extent that the activity is not in conformance with this chapter, it shall be considered a deemed approved activity.

“Recyclable materials” or *“recyclables”* mean that portion of solid waste or source-separated Construction & Demolition debris which is separated from other solid waste and Construction & Demolition debris and returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

“Recycle, recycled, recycling” means the process of separating, collecting, sorting, cleansing, treating, reconstituting or otherwise processing materials that are or would otherwise be disposed of in a landfill and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

“Recycling Facility” means a business that accepts by donation or purchase, recyclable materials from the general public, other recycling facilities, government agencies, and other business enterprises. The facility is used for the collection, sorting, and short-term storage of recyclable materials that would otherwise become solid waste. A recycling facility is not a greenwaste, solid waste, hazardous waste, or automobile dismantling facility. A recycling facility does not include the cleansing, grinding, treating or reconstituting of recyclable materials.

“Recycling Facility, Convenience” means a recycling facility located in a convenience zone as defined and certified by the California Department of Conservation under the California Beverage Container Recycling and Litter Reduction Act (Pub. Resources Code Section 14500 et seq.). Only cans, bottles, and plastic containers and other containers and material identified or adopted under the Public Resource Code Section 14500 et seq. are accepted at a convenience recycling facility.

“Recycling Manufacturer” means a business that includes the cleansing, grinding, treating, and reconstituting of recyclable materials that would otherwise become solid waste, and returning

them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

“Solid Waste” means all types of putrescible, offensive and nonputrescible solid and semisolid and liquid waste, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, animal carcasses, bulky goods, construction and demolition wastes; abandoned vehicles and parts thereof; discarded home and industrial appliances; dewatered, treated or chemically fixed sewage sludge which is not to be deemed to contain hazardous material or substances; manure, vegetable or animal solid or semisolid waste; green waste and recyclable solid waste; or any other material as defined by Public Resources Code § 40191, the state integrated waste management board, or any other entity having jurisdiction.

“Solid Waste Facility” means a solid waste transfer or processing station, a disposal facility or other waste conversion facility, and also includes any solid waste operation that may be carried out pursuant to an enforcement agency notification, including a construction debris chip and grind facility that does not involve *Greenwaste*.

“Tipping Floor” means that portion of the facility where hauling trucks dump their material for sorting or processing. The Tipping Floor does not include area for storage.

xx.xxx.xxx Public Hearing by Planning Commission

The planning commission may conduct public hearings and make determinations on whether waste and recycling facilities are in compliance with conditions of approval, operational standards, or deemed approved performance standards prescribed in these regulations, and may modify, suspend or revoke a facility’s conditional use permit or deemed approved status in order to obtain the compliance of the particular establishment with the provisions of this chapter. This section is not intended to restrict the powers and duties otherwise pertaining to other City officers or bodies in the field of monitoring waste and recycling facilities in the City. The planning commission shall have the powers and duties assigned to them by the City of Pomona Municipal Code and by this chapter.

xx.xxx.xxx Inspection and Right of Entry

The officials responsible for enforcement of the City of Pomona Municipal Code or other ordinances of the City or their duly authorized representatives may enter on any site or into any structure open to the public for the purpose of investigation provided they shall do so in a reasonable manner whenever they have cause to suspect a violation of any provision of this ordinance or whenever necessary to the investigation of violations to the conditions of approval, operational standards, or deemed approved performance standards prescribed in these regulations. If an owner, occupant or agent refuses permission to enter, inspect or investigate, premises which are not open to the public, the officials or their representatives may seek an inspection warrant under the provisions of California Code of Civil Procedure section 1822.50 et. seq. All such inspections shall be conducted in compliance with the Fourth Amendment to the United States Constitution.

xx.xxx.xxx Uses Permitted

The following uses shall be permitted in the zones indicated, provided that a conditional use permit shall first be obtained pursuant to the provisions of Section .580 of the Pomona Zoning Ordinance:

Use	Zone
Greenwaste Facility	M-2
Recycling Facility, Convenience	C-1, C-2, C-3, C-4, C-IND,
Recycling Facility	M-2
Solid Waste Facility	M-2

xx.xxx.xxx Conditional Use Permit Required

All waste and recycling facilities to which this chapter is applicable shall obtain a conditional use permit pursuant to Section .580 of the Pomona Zoning Ordinance and satisfy all pertinent conditions prior to engaging in any waste and recycling activities.

xx.xxx.xxx Uses Expressly Prohibited

The following uses shall be expressly prohibited in all zones in the City of Pomona:

- A. Hazardous Waste Facilities – this prohibition is not meant to prohibit household hazardous waste collection events sanctioned by the city or county
- B. Automobile Dismantling Facilities
- C. Electronic Waste Facilities
- D. Medical Waste Facilities

xx.xxx.xxx Number of Allowed Waste and Recycling Facilities and the Allowable Size of Each Individual Waste and Recycling Facility

- A. Each waste and recycling facility that either holds a deemed approved status pursuant to this chapter or obtained a conditional use permit after July 1, 2016 shall be granted a maximum amount of tons per day that are allowed to be accepted at that individual facility on a daily basis. The maximum ton per day limit for the facility will run with the land and cannot be increased without first being granted a conditional use permit if the facility holds deemed approved status, or modifying the existing conditional use permit if the facility has obtained a conditional use permit after July 1, 2016.
- B. For those facilities that hold a deemed approved status, the maximum ton per day limit for the facility shall be established by using an average per day for the most recent prior 12 month period as reported to CalRecycle.
- C. The total allowable of tons per day of all waste and recyclables allowed to be processed in the City on an aggregate basis shall be 1,000 tons per day. No new waste and recycling facility shall be allowed to obtain a new conditional use permit or no existing waste or recycling facility that holds deemed approved status or obtained a conditional

use permit after July 1, 2016 shall be allowed to expand the number of tons per day processed by the individual facility until such time as the total number of waste and recycling facilities in the City has an aggregate processing capacity of less than 1,000 tons per day.

- D. There shall be no more than six waste or recycling facilities permitted in the City. As defined below, deemed approved facilities shall be allowed to exist as long as they remain in compliance with the deemed approved provisions of this ordinance. No new facilities shall be allowed until such time as the number of facilities in the City falls to below six.

xx.xxx.xx Distance Requirements – Applicable to New Waste and Recycling Facilities

- A. No new waste or recycling facility shall be located within:
 - a. 1000 feet of public or private schools, health care facilities, religious facilities and parks or playgrounds
 - b. 750 feet of residentially zoned property or property that contains an occupied residential unit, with the exception of a permitted caretaker’s unit associated with an industrial use
 - c. 1000 feet of any other waste or recycling facility
- B. For purposes of this section, distances shall be measured between the closest property lines of the affected locations.

xx.xxx.xxx Operational Standards – Applicable to New or Modified Waste and Recycling Facilities

- A. All new or modified waste and recycling facilities shall be designed, constructed and operated to conform to all of the following operational standards:
 - 1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
 - 2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.
 - 3. That it does not result in repeated nuisance activities with the premises or in close proximity of the premises.
 - 4. That it complies with all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
6. The tipping floor shall be cleared on a daily basis and completely free of waste, debris and recyclables before the close of business each day. Solid Waste Facilities shall be allowed to store solid waste on the tipping floor in compliance with performance standard 18 below provided that the tipping floor is completely cleared of waste and debris at least once per work day.
7. All waste and recycling facilities shall prepare a fire prevention plan subject to approval by the Fire Marshal. The plan shall include at a minimum:
 - i. Facility location information, including emergency contact information
 - ii. Site map, showing all buildings; major storage, types of material processed, processing and transfer areas; access roads; and fire protection features
 - iii. Procedures to prevent fires, and response plans to control and extinguish fires that do occur

Should a fire occur, the facility operator shall file a report with the City, within two business days, listing the cause of the fire and the extent of the fire on the facility. Within five business days of receiving a report of a fire, the City shall perform an inspection of the facility according to the quarterly inspection procedures contained in this ordinance.

8. The storage and processing of all materials shall be done in an enclosed building with any roll up doors closed except when vehicles are in the act of entering or leaving the building. Buildings shall be designed with the use of rapid-rise roll up doors so that doors can be quickly opened and closed when vehicles enter or exit the building.
9. Sorted and processed recyclable materials shall be stored in approved storage locations for no longer than thirty days.
10. All air leaving the building shall be filtered to prevent particulate matter from leaving the building. Filtering systems used are required to filter out particles larger than 0.01 μm . All dust control systems shall employ Best Available Technologies (BATs). Buildings shall be designed with sufficient filtration and ventilation to safely allow all work to be done within the enclosed structure without being detrimental to the health of workers within the building.

11. All heavy equipment used in the building for processing and moving waste and recyclables, shall be certified as a low-emission vehicle and have a CARB-certified Tier 2 or better engine.
12. All work areas shall be paved and maintained with an impervious surface. The surface shall be maintained sufficiently to prevent cracks and potholes and shall not allow water to infiltrate.
13. No facility shall allow the collection or storage of Hazardous Waste, with the exception of chemicals or cleaning agents used in the normal course of business operations.
14. All facilities shall have a debris management plan that prevents the accumulation of trash and debris on site and in the surrounding neighborhood. The plan shall be approved by the City Manager, or designee, and shall include at a minimum:
 - i. -a daily general cleaning schedule to remove debris from facility floor and at least a ten-foot perimeter from property line
 - ii. -necessary steps are taken so that when clearing the facility floor and ten-foot perimeter, debris does not contribute to water runoff i.e. it shall not be hosed off onto the street
 - iii. -quarterly deep clean, in a manner that does not carry pollutants, toxic cleaning agents, or other debris into the water, air, or soil
 - iv. -adherence to any and all existing state and federal regulations pertaining to trash and debris management, including stormwater runoff pollution prevention plan
15. Prior to construction, all facilities shall complete a noise study on the proposed equipment and building to ensure that operations on the site, once constructed and in operation, will not exceed the City of Pomona noise standards in Section 18-311 of the Pomona City Code.
16. All facilities shall have a rodent and pest management plan that prevents the accumulation of trash and debris on site and in the surrounding neighborhood. The plan shall be approved by the City Manager, or designee, and shall include at a minimum:
17. Sorted and processed recyclable materials shall be stored in approved storage locations for no longer than thirty days.

18. All Solid Waste shall be removed from the site within 24 hours. In the event of an emergency situation, the City shall be notified immediately and the Solid Waste shall be removed within 48 hours of delivery. Exceptions to this limitation for State and Federally recognized holidays when landfills are close for acceptance of transfer trucks shall be recognized.
19. All yard areas behind the front yard setbacks shall be screened by an eight foot wall constructed with decorative block or other similar material.
20. A copy of these operational standards and any City operating conditions shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the facility. Additionally, a website address shall be posted on the exterior of the site in a spot that is legible to the public at all times. The website shall contain these operational standards and any City operating conditions, in both English and Spanish.
21. All facilities shall have an approved odor control plan in place prior to commencing construction. The plan shall identify potential odor sources, identify methods for mitigating the odor on site and at the neighboring properties, and shall contain a complaint response plan to receive and respond to complaints received from the public. Possible odor management practices include but are not limited to “negative air” containment systems, misters, and chemical neutralizers, as well as implementing management and process practices that reduce the source of odors.

- B. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit.

xx.xxx.xx Grounds for Conditional Use Permit Suspension, Modification or Revocation

- A. In addition to the grounds for revocation or modification of a conditional use permit contained in Section .580 of the Pomona Zoning Ordinance, a waste and recycling facility’s conditional use permit may be suspended for up to one year, revoked or modified by the planning commission after holding a public hearing in the manner prescribed in Section .580, for failure to comply with operational standards contained herein, or conditions of approval imposed through their conditional use permit. Notice of such hearing by the planning commission at which it will consider the suspension, revocation or modification of a facility’s conditional use permit shall state the grounds therefore.
- B. Any conditional use permit issued pursuant to the provisions of this chapter shall be subject to the condition, in addition to any and all other conditions, that it shall terminate

and cease to apply to any waste and recycling facility which shall have ceased its operation for a period of 180 or more calendar days.

xx.xxx.xx Investigative Procedures of Potential Violation of Conditions of Approval and Operational Standards

Upon the City's receipt of a complaint from the public, city official, or any other interested person that a conditional use permit activity is in violation of the operational standards and/or conditions of approval set forth in this chapter, the following procedure shall be followed:

- A. An enforcement officer shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity's compliance with operation standards and/or conditions of approval.
- B. If the enforcement officer determines that the activity is not in violation of the operational standards and/or conditions of approval, the enforcement officer shall prepare a report of the inspection. Such report shall be placed on the City's website in the manner prescribed in the Regulatory Inspection section of this ordinance.
- C. If the enforcement officer determines that the activity is in violation of the operational standards and/or conditions of approval, the enforcement officer shall give written notice of the violation to the owner and/or operator of the facility and seek to remedy the violation under the city's administrative citation procedures contained in Section xx.xxx of this code. The first notice of violation shall be given in accordance with section xx.xxx of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the planning commission for a hearing at which the facility's conditional use permit may be suspended, modified or revoked.
- D. Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of Section xx.xxx of this code, unless otherwise expressly provided by this chapter. If the owner or operator receiving an administrative citation contests the citation and a hearing is held pursuant to Section xx.xxx, the hearing officer may, in addition to exercising all powers designated in Section xx.xxx, make a recommendation to the planning commission to modify or revoke the facility's conditional use permit if in the judgment of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including but not limited to, the conditions listed in Section xx.xxx.xx, and the operational standards listed in Section xx.xxx.xx of this chapter.

- E. If a hearing before the planning commission is conducted on a potential violation in the manner prescribed in Section .580 of the Pomona Zoning Ordinance, it shall determine whether the activity is in compliance with the operational standards and/or conditions of approval. Based on this determination, the planning commission may suspend, modify or revoke the facility's conditional use permit or impose additional or amended conditions on the use, including but not limited to the conditions listed in Section xx.xxx.xx, and the operational standards listed in Section xx.xxx.xx, of this chapter, based on the information then before it. In reaching a determination as to whether a use has violated the operational standards or conditions of approval, or as to the appropriateness of suspending, modifying or revoking of a conditional use permit, or the imposition of additional or amended conditions on a use, the planning commission may consider the following:
1. The length of time the facility has been out of compliance with the operational standards and/or conditions of approval.
 2. The impact of the violation of the operational standards and/or conditions of approval on the community.
 3. Any information regarding the owner of the facility's efforts to remedy the violation of the operational standards and/or conditions of approval.
- F. If in the judgement of the planning commission, the operations of the owner or operator of the facility constitute a nuisance, the owner or operator is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the planning commission may suspend, modify or revoke the facility's conditional use permit. All determinations, decisions and conditions made or imposed regarding the use of a facility shall run with the land.
- G. The decision of the planning commission shall be final and conclusive unless appealed in writing to the city council within 20 days of planning commission action.

xx.xxx.xx Appeal From Suspension, Modification or Revocation of Conditional Use Permit

Any applicant, property owner or resident within 1,000 feet of the subject property, or council member may appeal the decision of the planning commission from a suspension, modification or revocation of a conditional use permit pursuant to this chapter, to the city council pursuant to Section .580 of the Pomona Zoning Ordinance.

xx.xxx.xx Deemed Approved Waste and Recycling Facility Regulations

Except as otherwise provided in this chapter, any permitted or conditionally permitted waste and recycling facility, and any legal nonconforming waste and recycling facility lawfully operating prior to July 1, 2016 shall thereafter be a facility with deemed approved status in accordance

with Section xx.xxx.xx. Such facility may continue to lawfully operate provided the operation is conducted in compliance with the performance standards contained in Section xx.xxx.xx and paid the annual permit fee required by this chapter.

xx.xxx.xx Applicability of Deemed Approved Waste and Recycling Facility Regulations

The deemed approved waste and recycling facility regulation shall apply to all permitted or conditionally permitted waste and recycling facility activities and legal nonconforming waste and recycling facility activities operating within the City on July 1, 2016.

xx.xxx.xx Automatic Deemed Approved Status

All waste and recycling facilities not consistent with the standards and regulations set forth in this chapter that were conducted by permitted or conditionally permitted facilities, and all legal nonconforming facilities, on July 1, 2016, shall automatically become deemed approved facilities as of July 1, 2016, and shall no longer be considered permitted, conditionally permitted or legal nonconforming facilities. Each deemed approved facility shall retain its deemed approved status as long as it complies with the performance standards of this chapter.

xx.xxx.xx Deemed Approved Performance Standards for Waste and Recycling Facilities

The provisions of this section shall be known as the deemed approved performance standards. The purpose of these standards is to control dangerous or objectionable environmental effects of waste and recycling facilities. These standards shall apply to all deemed approved waste and recycling facilities that hold deemed approved status pursuant to this chapter. A waste and recycling facility shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

1. The waste and recycling facility shall not cause adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
2. The waste and recycling facility shall not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.
3. The waste and recycling facility shall not allow repeated nuisance activities within the premises or in close proximity to the premises.
4. The waste and recycling facility shall comply with all provisions of local, state or federal laws, regulation or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.

5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
6. On or before January 1, 2017, the operator shall prepare a detailed site plan showing the location of all of the functions of the facility. The site plan shall include sufficient details and dimensions for the storage areas, processing areas, tipping floor, parking spaces, and the outline of buildings. The plan shall be approved by the City Manager, or designee.
7. On or before July 1, 2017, the facility shall be required to have the tipping floor cleared on a daily basis and completely free of waste, debris and recyclables before the close of business each day. Solid Waste Facilities shall be allowed to store solid waste on the tipping floor in compliance with performance standard 18 below provided that the tipping floor is completely cleared of waste and debris at least once per work day.
8. On or before July 1, 2017, all waste and recycling facilities shall prepare a fire prevention plan subject to approval by the Fire Marshal. The plan shall include at a minimum:
 - i. Facility location information, including emergency contact information
 - ii. Site map, showing all buildings; major storage, types of material processed, processing and transfer areas; access roads; and fire protection features
 - iii. Procedures to prevent fires, and response plans to control and extinguish fires that do occur

Should a fire occur, the facility operator shall file a report with the City, within two business days, listing the cause of the fire and the extent of the fire on the facility. Within five business days of receiving a report of a fire, the City shall perform an inspection of the facility according to the quarterly inspection procedures contained in this ordinance.

9. On or before July 1, 2019, the storage and processing of all materials shall be done in an enclosed building with any roll up doors closed except when vehicles are in the act of entering or leaving the building. Buildings shall be designed with the use of rapid-rise roll up doors so that doors can be quickly opened and closed when vehicles enter or exit the building.
10. For facilities with an existing building, on or before July 1, 2017, all air leaving the building shall be filtered to prevent particulate matter from leaving the building. Filtering systems used are required to filter out particles larger than 0.01 μm . For facilities

without an existing building, if/when a building is constructed to meet the standards of this section, the filtration equipment shall be installed at the time of building construction. All dust control systems shall employ Best Available Technologies (BATs). Any new buildings shall be designed with sufficient filtration and ventilation to safely allow all work to be done within the enclosed structure without being detrimental to the health of workers within the building.

11. On or before July 1, 2019, all heavy equipment used in the building for processing and moving waste and recyclables, shall be certified as a low-emission vehicle and have a CARB-certified Tier 2 or better engine.
12. For facilities that have existing paved surfaces, the surface shall be maintained sufficiently to prevent cracks and potholes and shall not allow water to infiltrate. For facilities that have areas of their site that are not in the required landscaping areas, such areas shall be paved on or before July 1, 2019. Paving shall be done in accordance with all local, state or federal laws, regulations and permits.
13. After August 1, 2016, no facility shall allow the collection or storage of Hazardous Waste, with the exception of chemicals or cleaning agents used in the normal course of business operations.
14. On or before July 1, 2017, all facilities shall have a debris management plan that prevents the accumulation of trash and debris on site and in the surrounding neighborhood. The plan shall be approved by the City Manager, or designee, and shall include at a minimum:
 - i. -a daily general cleaning schedule to remove debris from facility floor and at least a ten-foot perimeter from property line
 - ii. -necessary steps are taken so that when clearing the facility floor and ten-foot perimeter, debris does not contribute to water runoff i.e. it shall not be hosed off onto the street
 - iii. -quarterly deep clean, in a manner that does not carry pollutants, toxic cleaning agents, or other debris into the water, air, or soil
 - iv. -adherence to any and all existing state and federal regulations pertaining to trash and debris management, including stormwater runoff pollution prevention plan
15. All facilities shall ensure that noise generate on the premises does not exceed the City of Pomona noise regulations found in Section xx.xxx. Should the facility be found in violation of the noise standards, such facility shall perform a noise study to determine

how to reduce the noise levels to below that required by Section xx.xxx and comply with the measures identified in the study to reduce the noise to acceptable levels.

16. On or before July 1, 2017, all facilities shall have a rodent and pest management plan that prevents the accumulation of trash and debris on site and in the surrounding neighborhood. The plan shall be approved by the City Manager, or designee, and shall include at a minimum:
17. Sorted and processed recyclable materials shall be stored in approved storage locations for no longer than thirty days.
18. All Solid Waste shall be removed from the site within 24 hours. In the event of an emergency situation, the City shall be notified immediately and the Solid Waste shall be removed within 48 hours of delivery. Exceptions to this limitation for State and Federally recognized holidays when landfills are close for acceptance of transfer trucks shall be recognized.
19. On or before July 1, 2018, all facilities without walls that adequately screen yard areas behind the front yard setbacks shall construct an eight foot wall constructed with decorative block or other similar material. For facilities that have an existing screening wall that is less than eight feet in height, on or before July 1, 2019, the wall height shall be increased to eight feet. Should the existing wall not allow for an increase to eight feet due to the material used in the original construction or due to structural inadequacies for a larger wall, an entirely new wall shall be constructed.
20. Beginning July 1, 2016, a copy of these operational standards and any City operating conditions shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the facility. Additionally, a website address shall be posted on the exterior of the site in a spot that is legible to the public at all times. The website shall contain these operational standards and any City operating conditions, in both English and Spanish.
21. On or before July 1, 2017, all facilities shall have an approved odor control plan in place prior to commencing construction. The plan shall identify potential odor sources, identify methods for mitigating the odor on site and at the neighboring properties, and shall contain a complaint response plan to receive and respond to complaints received from the public. Possible odor management practices include but are not limited to “negative air” containment systems, misters, and chemical neutralizers, as well as implementing management and process practices that reduce the source of odors.

xx.xxx.xx Notification to Owners of Waste and Recycling Facilities Conducting Deemed Approved Activities

The City's development and neighborhood services department shall notify the owner and/or operator of a waste and recycling facility as shown on their business license, and also, if not the same, any property owner at the address shown on the county assessor's property tax assessment records, of the facility's deemed approved status. The notice shall be sent by first-class mail and certified mail return receipt requested and shall include a copy of the performance standards in this chapter with the requirement that they be posted as per Section xxx. This notice shall also provide that the activity is required to comply with all performance standards, and that the activity is required to comply with all other aspects of the deemed approved regulations. Should the notice be returned, then the notice shall be sent via regular mail. Failure of any person to receive notice given pursuant to this chapter shall not affect the deemed approved status of the facility.

xx.xxx.xx Grounds for Deemed Approved Status Suspension, Revocation or Termination

- A. A waste and recycling facility's deemed approved status may be suspended for up to one year, modified or revoked by the planning commission after holding a public hearing in the manner prescribed in Section .580 of the Pomona Zoning Ordinance, for failure to comply with the performance standards set forth in Section xx.xxx.xx. Notice of such hearing by the planning commission at which it will consider the modification, suspension or revocation of a facility's deemed approved status shall be in writing and shall state the grounds therefore.

- B. The occurrence of any of the following shall terminate the deemed approved status of the waste and recycling facility after notice and a hearing in front of the planning commission in accordance with Section .580 of the Pomona Zoning Ordinance, and require the issuance of a conditional use permit in order to continue the waste and recycling facility activities:
 - 1. An existing waste and recycling facility changes its activities so that a different or additional local, state or federal license is required.

 - 2. There is a substantial modification to the mode or character of the operation.

 - 3. As used herein, the phrase "substantial modification to the mode or character of operation" includes but is not limited to the following:
 - a. The waste and recycling facility increases the floor or land area or storage space devoted to the processing or storage of recyclables.

 - b. The waste and recycling facility voluntarily discontinues active operation for more than 180 consecutive days.

 - 4. A "substantial change in the mode or character of operation" shall not include:

- a. Re-establishment, restoration or repair of an existing waste and recycling facility on the same premises after the premises have been rendered totally or partially inaccessible by a riot, insurrection, toxic accident or act of God, provided that the re-establishment, restoration or repair does not add to the capacity, floor or land area, or storage area devoted to the processing or storage of recyclables.
 - b. Temporary closure for not more than 180 days in cases of vacation or illness or for purposes of repair, renovation or remodeling if that repair, renovation or remodeling does not change the nature of the facility and does not add to the capacity, floor or land area, or storage area devoted to the processing or storage of recyclables. The planning commission may, upon request of an owner of a waste and recycling facility, grant one or more extension to the period of temporary closure, none of which may exceed 60 days, and together may not exceed 180 days.
5. Once it is determined by the City that there has been a discontinuance of active operation for 180 consecutive days, it may be resumed only upon the granting of a conditional use permit as provided in Sections xx.xxx of this chapter. In the event that any active operation is discontinued on a property for a period of 180 consecutive days, such discontinuance shall be presumed to be abandonment of the use by the property owner. At any time after any active operation is discontinued for a period of 180 consecutive days or more, the City Manager's designee shall notify the property owner in writing of the determination of presumed abandonment of the active operation. Pursuant to Section xx.xxx of this title, the property owner may appeal the determination to the planning commission, which may overturn the determination only upon making a finding that the evidence supports the property owner's position that the nonconforming use was not discontinued for a period of 180 consecutive days or more. The property owner shall be notified by the City of the termination of the deemed approved status and shall be informed of the property owner's right to appeal the City's decision to the planning commission.

xx.xxx.xx Investigative Procedures of Potential Violation of Performance Standards by Facility with deemed Approved Status

Upon the City's receipt of a complaint from the public, City official, or any other interested person that a deemed approved use is in violation of the performance standards set forth in this chapter, the following procedure shall be followed:

- A. An enforcement officer shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity's compliance with performance standards.

- B. If the enforcement officer determines that the deemed approved facility is in violation of the performance standards, the enforcement officer shall give written notice of the violation to the owner and/or operator of the facility and seek to remedy the violation under the City's administrative citation procedures contained in Chapter xx.xxx of the code. If, however, the Community Development Director in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the planning commission for a hearing at which the deemed approved facility's deemed approved status may be suspended, modified or revoked.
- C. Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of Chapter xx.xxx of the code, unless otherwise expressly provided by this chapter. If, the owner or operator receiving an administrative citation contests the citation and a hearing is held pursuant to Chapter xx.xxx, the hearing officer may, in addition to exercising all powers designated in Chapter xx.xxx, make a recommendation to the planning commission to suspend, modify or revoke the deemed approved facility's deemed approved status if in the judgement of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including by not limited to, the conditions listed in Section xx.xxx.xxx and the operational standards listed in Section xx.xxx.xx, of this chapter.
- D. If a hearing is conducted on a potential violation in the manner prescribed in Chapter xx.xxx, the planning commission shall determine whether the deemed approved activity is in compliance with the performance standards. Based on this determination, the planning commission may suspend, modify or revoke the deemed approved facility's deemed approved status or impose additional or amended conditions on the use, including but not limited to the conditions listed in Section xx.xxx.xxx, and the operational standards listed in Section xx.xxx.xxx, of this chapter, based on the information then before it. In reaching a determination as to whether a use has violated the performance standards, or as to the appropriateness of suspending, modifying or revoking a deemed approved activity's deemed approved status, or imposing additional or amended conditions on the use, the planning commission may consider:
1. The length of time the deemed approved activity has been out of compliance with the performance standards.
 2. The impact of the violation of the performance standard(s) on the community.
 3. Any information regarding the owner of the deemed approved activity's efforts to remedy the violation of the performance standard(s).

- E. If in the judgement of the planning commission, the operations of the owner or operator of the deemed approved facility constitute a nuisance, the owner is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the planning commission may suspend, modify or revoke the facility's deemed approved status. If suspended, any continued operation of the business shall require a conditional use permit approved by the planning commission. All determinations, decisions, and conditions made or imposed regarding the use of a deemed approved facility shall run with the land.
- F. The decision of the planning commission shall be final and conclusive, unless appealed in accordance with the provision of Chapter xx.xxx of this title.
- G. All hearings held pursuant to this section shall be conducted in the manner set forth in Chapter xx.xxx.

xx.xxx.xxx Appeal from Suspension, Modification or Revocation of Deemed Approved Status

Any applicant or other person aggrieved by a decision of the planning commission from a suspension, modification or revocation of a facility's deemed approved status pursuant to this chapter may appeal the decision to the City Council pursuant to Chapter xx.xxx of this code. All hearings pursuant to this section shall be conducted in the manner set forth in Chapter xx.xxx.

xx.xxx.xx Penalties

- A. Any person violating any of the provisions of this chapter or who causes or permits another person to violate any provision of this chapter may be charged with either an infraction or a misdemeanor, and shall be subject to the provisions of the general penalty clause as set forth in Section xx.xxx.xx of this code.
- B. In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provision of these regulations shall be and is declared to be a nuisance and may be abated as such by the City.
- C. Nothing in this chapter shall be construed to prevent the City of Pomona from pursuing any and all other legal remedies that may be available, including but not limited to civil actions filed by the city attorney seeking any and all appropriate relief such as civil injunctions and penalties.
- D. Notwithstanding Chapter xx Administrative Citation Procedures, or any other section of this code to the contrary, any person, entity, or organization that violates the provisions of this chapter may be subject to civil penalties up to \$1,000 for each day said violation is in existence.

- E. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.
- F. In addition to the punishment provided by law, a violator is liable for such costs expenses and disbursements paid or incurred by the City or any of its contractors in correction, abatement and prosecution of the violation. RE-inspection fees to ascertain compliance with previously noticed or cited violations may be charged against the owner of the facility conducting the deemed approved activity or the owner of the property where the facility is located. The enforcement officer shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.

xx.xxx.xx Regulatory Fee

- A. The intent and purpose of this section is to impose a regulatory fee upon all waste and recycling facilities that either hold deemed approved status pursuant to this chapter or obtained a conditional use permit after July 1, 2016. This fee shall provide for the enforcement and regulation of the conditions of approval, operational standards, performance standards and other applicable regulations set forth in this chapter with regard to waste and recycling facilities.
- B. The waste and recycling regulatory fee shall be established by resolution of the City Council. The fee shall be calculated so as to recover the total cost of both administration and enforcement of the performance standards and other applicable regulations set forth under this chapter upon all waste and recycling facilities that either hold deemed approved status pursuant to this chapter or obtained a conditional use permit after July 1, 2016. The costs recovered shall include, but not be limited to, the cost of notifying facilities of their deemed approved status, administering the program, facility inspection and compliance checks, documentation of violations, conducting hearings and prosecution of violators, but shall not exceed the cost of the total program. All fees shall be used to fund the program. Fees are nonrefundable except as may be required by law.

xx.xxx.xx Regulatory Inspections

- A. The City shall make a regulatory inspection on a quarterly basis of each waste and recycling facility that either holds deemed approved status pursuant to this chapter or obtained a conditional use permit after July 1, 2016. The regulatory inspection shall be conducted for the purposes of verifying that the facility is in compliance with the sections of this chapter, including the conditions of approval, operational standards, performance standards, and other applicable regulations.

- B. Each waste and recycling facility shall make its premises available for a regulatory inspection upon seven calendar days' notice by the City. The entire premises include the main building, any interior processing areas, any office areas, and any out buildings. Closed and covered containers that store recyclables and waste shall also be opened upon the request of the inspector.
- C. Refusal by the owner or operator of the waste and recycling facility to provide access to the premises upon seven calendar days' notice by the City shall constitute grounds for a suspension, modification or revocation of the Conditional Use Permit or Deemed Approved Status in accordance with sections xx.xxx.xx and xx.xxx.xx of this chapter.
- D. The City inspector shall visit the facility and review the facility's compliance with the applicable codes and regulations. Within fourteen calendar days of conducting the inspection, the City shall create a written report of inspection and note any violations that were found to exist at the facility. A copy of the written report shall be made available for public review on the City's website.
- E. Should any violations be noted in the regulatory inspection, the process under section xx.xxx.xx of this chapter for the investigative process for violation of standards or conditions of approval shall be followed to remedy the violation.
- F. If during the regulatory inspection the facility is determined to be in compliance with the sections of this chapter for two successive quarters, the facility shall be inspected on a semi-annual basis from that point forward for as long of a time as the facility is found to be in compliance during the then semi-annual regulatory inspection.