

LEGAL MEMORANDUM

TO: The Sandy City Council
FROM: Tracy S. Cowdell, General Counsel for Sandy City Council
DATE: January 21, 2022
RE: Bulk Waste Clean-Up Ordinance

Summary

For several decades, residents of Sandy City have enjoyed curb-side waste removal two times a year. The program is wildly popular with the community and is based on the notion that neighborhoods are more appealing with less debris on private property. Recently, the sustainability of the program was challenged by budgetary constraints and environmental concerns. The Bradburn Administration sought to address these challenges by materially altering the program. After seeking community feedback, Council Member Sharkey sponsored a proposal that tasked the legislative staff to seek and create a solution to the dilemma. Under the direction of the Council, a significant amount of research, meetings, and collaboration has produced an ordinance that is environmentally compliant and maintains the substance of the long-standing policy. Newly elected Mayor Zoltanski and the professional administrative staff have provided support and insight to improve the proposed policy. The proposed bulk waste ordinance is ready for consideration and debate by the Sandy City Council.

Procedural History

The City's curbside Bulk¹ Waste Clean-Up Program ("Bulk Waste," "Waste Program," or "Program") began over thirty (30) years ago.² The Program has been reviewed from time to time but has not changed substantively in over twenty (20) years. Because of various concerns, several months ago the City administration sought to modernize the Program. Members of the community who appreciate the convenience of the Program voiced opposition to the proposed changes. Council members also expressed some hesitation about a fundamental shift in Program philosophy. Council Member Sharkey sponsored a proposal to study and find a solution to the problem. As the policy-making body of the City, the Council listened to the community, carefully studied the issues, weighed various options, and is now

¹ It should be noted that the City Code often refers to bulk waste as "bulky waste." For purposes of this memo, bulk waste is anything any resident legally places on the curb for the City to pick up and haul to the landfill.

² Based on my actual knowledge, this Program is at least forty-five (45) years old.

ready to implement a bulk waste policy that is both sustainable and legally compliant. Under the Council's direction, City staff has now completed a proposed ordinance that both maintains the substance of the long-standing policy and addresses key environmental concerns.

History and Basics of the Traditional Curbside Bulk Waste Clean-Up Program

Twice a year, City employees collect bulk items and other waste on every street in the City. The Program requires approximately twenty-four (24) weeks of time to complete. The City staff operates loaders to pick up bulk items and other waste and large trucks cycle the waste to the landfill. It is an enormous program that includes over four thousand (4,000) trips to the landfill each calendar year. According to the anecdotal data, the public highly supports the current Program. The policy behind the Program has always centered on facilitating more organized homes, properties, and communities within the City. The cost to operate this Program continues to escalate. While evaluating the Program, it is important to ensure compliance with the City's MS4 Storm Water permit. Additionally, an unintended consequence of the Program is that it may actually "encourage" private salvage crews who hunt through the streets looking for anything of value.³ Over the last several months, the City Attorney's office and Counsel for the City Council have highlighted the conflicting City ordinances, the lack of a codified policy, and other legal intricacies. Furthermore, historically, the City has employed a strategy of limited or selective enforcement of the rules surrounding the bulk waste cleanup program.

The Sandy City Council Carefully Studied Data and the Issues

After realizing certain limitations of the existing Program, the Bradburn Administration worked in good faith with a City vendor to address the problems associated with the Bulk Waste Program.⁴ Mayor Bradburn mentioned the sweeping changes to the Program during a Mayor's Report to the City Council. The majority of the City Council was uncomfortable with the proposed changes to the Program. As part of its oversight responsibility, the Council nevertheless reviewed the proposed shift in policy. In the aftermath of implementing the policy changes, the public was vocal in expressing its support for the existing Program and its disapproval of the policy changes.

After City staff voluntarily self-reported possible violations of the City's MS4 Storm Water permit, the City received a Warning Letter from the Utah Division of Water Quality ("DWQ") in July 2020 stating that its Bulk Waste Program was potentially non-compliant with storm water permit regulations. The City responded to the

³ I do not mean legally encourage, but practical encouragement. Ironically enough, there is some benefit in repurposing many items that are placed on the curb for bulk waste clean-up.

⁴ Clearly significant time and energy went into developing this new plan.

DWQ, as required, by letter in August 2020. The City provided the DWQ with a tentative timeline for the City to adjust its current policy and committed to send to the DWQ a summary of the proposed program. The City administration also committed in writing to approve and implement an updated policy.

In an effort to procure all of the information, the City Council listened to a series of reports on the record related to concerns, issues, opportunities, and feedback from constituents. The Public Utilities Department provided a brief overview of the Sandy City Storm Water Management Program. Jeanne Riley from DWQ reviewed applicable state storm water regulations. The Council also received reports from the Public Works, Finance, and Legal departments. The Council has participated in public forums and constituency meetings with members of the community. Overwhelmingly, the public feedback has largely centered on maintaining or improving upon the existing Program. Bulk waste was a central issue in the 2021 Sandy City municipal elections.

Through this fact-finding process, the Council directed legislative staff to carefully craft a policy that will both seek to satisfy the public demand and comply with federal, state, and local law.

The Council empowered the legislative staff to provide or otherwise procure the necessary technical, legal, and analytical assistance to propose a policy or policy options that both contemplates the public sentiment and the surrounding legal issues.⁵ Under the Council's direction, the staff studied this issue to determine if it was possible to at least preserve the "bones" of a very popular policy.

Key Elements and Approach to Develop Sustainable Bulk Waste Policy

The Council tasked City staff with several governing principles to find a workable solution. These governing principles include, but are not limited to, the following:

- Preserve as much of the current policy as possible;
- Keep the process simple and cost effective;
- Focus on legal compliance;
- Seek feedback from the subject-matter experts at the City;
- Review all relevant sections of the Sandy City Municipal Code including, but not limited to, Title 9 Stormwater; Title 13 Public Peace & Safety; and Title

⁵ In the spirit of full disclosure, it might be necessary to retain the services of an environmental scientist, environmental engineer, or an environmental attorney. These services may or may not be retained through our current contract with the City Council's legal counsel.

19 Property Maintenance in order to identify strengths of the existing program;

- Review state and federal code with respect to Storm Water and Environmental Safety;
- Discover any and all likely violations of the City’s Utah Pollutant Discharge Elimination System (UPDES) Permit No. UTS000001 which is regulated under the Jordan Valley Municipalities Municipal Separate Storm Sewer System (MS4) Permit;
- Engage in discussions and negotiations with DWQ personnel with regard to the UPDES/MS4 permit;
- Engage necessary experts/consultants to review the data and compile their thoughts and results;
- Produce a durable policy;
- Educate the community; and
- Ensure there is an enforcement mechanism in the proposed new policy.

Administrative Support

The City administration has had the opportunity to review, comment, and make suggested substantive improvements to the proposed ordinance. Mayor Zoltanski is supportive and has been “hand-on” in various meetings discussing the proposed ordinance. Her leadership and direction to staff has been invaluable in bringing this proposal to fruition. Mr. Pace and I believe that the ordinance is defensible.

Features of the Bulk Waste Clean-Up Ordinance

By design, the ordinance is written in a way that is easy to read and understand. Here are some of the key provisions of the proposed ordinance:

- Basic principles of the original policy remain;
- Transition from administrative policy to legislative policy;
- Changes the name from bulky waste to bulk waste;
- Implements a more narrow window on street placement duration;
- No items may be placed in the storm drains, gutters, or ditches;
- Green organic waste must be separated from other bulky waste items;

- Certain waste must be bagged or boxed;
- Weight and size limits have been established;
- Hauling bulk waste from its original residence for bulk waste pickup at another location is now considered illegal dumping;
- There are various education and enforcement provisions; and
- The City administration is tasked with ensuring compliance.

Outstanding Issues Related to Bulk Waste

In order to ensure that the Program is durable, there are outstanding issues that need to be reviewed and considered:

1. Education and Enforcement. In order for the Program to work, everyone must understand its parameters and buy-in. The proposed ordinance balances the requirements of the regulatory framework against the most desirable policy. Lack of compliance will undoubtedly result in violations of the City's storm-drain permit.
2. Hire Additional Staff. It is unlikely that the City administration will be able to dedicate the professional bandwidth necessary to implement the Program. One additional code enforcement officer dedicated to the enforcement of the Program will likely need to be hired.
3. Administrative Law Judge. The Program may require the City to implement an administrative process of resolve violations of the new ordinance.
4. Review Policy and Amend as Necessary. Amendments to the Program will need to be made from time to time. The City administration and the Council will both need to review and ensure compliance with the ordinance.
5. High Cost. This Program is expensive and will be more expensive in the future. The Council will have to consider the new money needed to ensure compliance with federal, state, and local rules.
6. Future Policy. The Council should continue to study this matter. In a few years, the hazardous waste center and the garbage transfer station will be located on 700 West in the City; that will likely be a good time to revisit parts of this ordinance. The Council may also wish to study curbside green waste pick-up with the weekly garbage and other options to supplement or eventually replace the Bulk Waste program.

Legislative Staff Recommendation

1. Adopt the ordinance as presented;
2. Ensure that the community receives education about the Program;
3. Ensure that there is widespread buy-in and compliance with the Program;
4. Fund the program during the budget process;
5. Review and provide oversight for the Program; and
6. Amend the ordinance from time to time as needed.