

DRAFT 10-27-04

ORDINANCE 04-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF COSTA MESA, CALIFORNIA, ADOPTING A SOLID
WASTE HAULING FRANCHISE FEE

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1: Article 1, Chapter IV of Title 8 of the Costa Mesa Municipal Code is hereby amended by adding section 8-87 as follows

A. Add section 8-87 as follows:

“Sec. 8-87. Franchise fee.

- (a) *Franchise required:* No solid waste enterprise shall use any Public Highway in the City of Costa Mesa without first obtaining and maintaining in effect a solid waste hauling franchise from the City for the use of such streets to conduct its business activity.
- (b) *Grant of franchise:* The City hereby grants a solid waste hauling franchise to any solid waste enterprise upon the issuance to it of a permit issued pursuant to section 8-77 of this Article. The term of the franchise shall run concurrently with the term of the permit and shall end upon the termination of the permit. The valid possession of such a permit shall be deemed to make a solid waste enterprise a franchisee under this section.
- (c) *Classes of franchises:* A Class A and a Class B franchise may be issued under this section. Holders of Class A franchises (“Class A Franchisees”) may operate any and all types of licensed solid waste collection vehicles to service commercial, multi-family, temporary bin and industrial accounts within the City’s waste disposal jurisdiction. Holders of Class B franchises (“Class B Franchisees”) may operate only roll-off vehicles to service commercial, industrial and temporary bin accounts within the City’s waste disposal jurisdiction. For the purposes of this section, a roll-off vehicle shall be defined as any licensed solid waste collection vehicle used to service 10, 20, 30 and 40 cubic yard containers and compaction units. In addition to the requirements of section 8-84(b) of this Article, Class B Franchisees shall direct all collected solid waste to a recycling, diversion or materials recovery processing plant or facility. Class B Franchisees are prohibited from directing any collected solid waste to a landfill.
- (d) *Franchise fee:* Every holder of a franchise issued pursuant to this section (a “Franchisee”) shall pay a franchise fee as set by City Council resolution.

The purpose of the franchise fee is to provide funds to the City to pay for the maintenance and rehabilitation of the Public Highways in the City and for other general revenue purposes. Class A Franchisees shall pay an annual minimum franchisee fee in the amount of ten thousand dollars (\$10,000). Class B Franchisees shall pay an annual minimum franchisee fee in the amount of one thousand five hundred dollars (\$1,500). Such annual minimum franchisee fee payments shall be paid to the City upon issuance of a permit pursuant to section 8-77 of this Article and, thereafter, by January 1st of each calendar year. The annual minimum franchisee fee shall only be credited towards the franchise fees that accrue during the same calendar year in which the minimum fee is paid.

- (e) *Records Requirements:* Every Franchisee shall maintain all records relating to its solid waste handling services pursuant to this section, including but not limited to customer lists, billing records, services requests, cash receipts records, records demonstrating compliance with the requirements of section 8-84(b) of this Article, and other documents and materials that reasonably relate to the Franchisee's compliance with this section. Upon five (5) business days notice, such records shall be made available for City inspection at the Franchisee's regular place of business. If the Franchisee's regular place of business is not located within the County of Orange, the Franchisee shall make such records available for City inspection at a location within the County of Orange, as determined by the City.
- (f) *Audit Requirements:* An independent auditing firm shall perform an audit, at City's expense, of any Franchisee's records (the "City Audit") to ensure compliance with the provisions of this section on an annual and/or as-needed basis, to be determined by the City. The scope, requirements and consequences of the City Audit shall be set by City Council resolution.
- (g) *Exemption:* The franchise fee imposed pursuant to this section shall not be imposed upon any solid waste enterprise that has a franchise or contract with the Costa Mesa Sanitary District for any revenue the solid waste enterprise earns under that franchise or contract."

B. Amend section 8-77(e)(5) as shown below:

"(e)(5) A written source reduction and recycling plan with details and time frame for implementation on how the permittee will provide the programs to its customers as required by the City of Costa Mesa Source Reduction and Recycling Element which include but are not limited to all of the following:

- a. Reduction of solid waste to maintain a fifty (50) per cent diversion rate through source reduction, recycling and composting.
- b. Economic incentives to achieve the diversion rate set forth in subparagraphs (5)(a).
- c. Technical, instructional, promotional, and educational programs to achieve the diversion rate set forth in subparagraphs (5)(a).

- d. Composting programs to facilitate the achievement of the diversion rate set forth in subparagraphs 5(a).
- e. Special waste programs.”

C. Amend section 8-78(c) as shown below:

“(c) No permit granted pursuant to this article shall be assigned or transferred without the consent of the director of public services. The term of the permit shall be for a period of seven (7) years, provided that on each anniversary date of a permit it shall be automatically extended for one (1) additional year so that the term remains seven (7) years unless at least 60 days prior to the anniversary date either the city or permittee notifies the other in writing that the permit will not be renewed in which case the term shall not be extended for an additional year and will have only six (6) years remaining and shall not be automatically extended thereafter. Nothing in this subdivision shall prevent the city from terminating a permit before the end of its term pursuant to the provisions of section 8-79. No permit granted pursuant to this article shall limit the right of the city to grant an exclusive or nonexclusive franchise for solid waste handling services in the city. A permit issued under this article shall not grant the permittee rights under California Public Resources Code Section 49520, where at the time the permit is granted the permittee did not have a right to continue service under such section.”

D. Amend section 8-79(a) as shown below:

“In the event that any person or solid waste enterprise holding a permit to collect solid waste, hazardous waste, or infectious waste upon or along any public highway within the city from any commercial, industrial, or multifamily residential unit(s), or residential unit(s) violates any of the conditions of such permit, the requirements of Section 8-87, the provisions of this article, or any other ordinance, statute, or regulation relating to the collection, storage, or disposal of solid waste, hazardous waste, or infectious waste, or collects such solid waste in an unlawful, improper, or unsanitary manner, the director of public services may revoke such permit issued to such person or enterprise as provided by this section.”

E. Amend section 8-79(c) as shown below:

“Regarding the failure of a permittee to comply with the requirements of section 8-84, including, but not limited to, the maintenance of the fifty (50) per cent diversion mandate, as required in its source reduction and recycling plan, the following procedure will be followed:”

F. Amend section 8-80(c) as shown below:

“Each container of a residential unit utilizing curbside service shall comply with the requirements of the CMSD.”

G. Amend section 8-82(c) as shown below

“The permittee shall indemnify the city, its officers and employees, against, and hold the city, its officers and employees, harmless from, any claims asserted against the permittee on account of the negligence of the permittee or its employees, by employees of the permittee or by third parties, arising out of personal injuries or property damage, including hazardous material clean up costs and penalties, suffered by any such persons on account of the operations of the permittee hereunder. The permittee shall provide and maintain in effect, bodily injury, property damage and environmental liability insurance with limits in an amount approved by the city attorney and as set forth in the permit granted. The permittee shall have the city, its officials and employees named as an additional insured under each of the aforementioned policies, and such policies shall be endorsed to require thirty (30) days written notice to the city prior to any cancellation thereof. The permittee shall furnish to the city certificates evidencing that the insurance required hereunder is in effect and such certificates shall be in a form approved by the City’s risk management office.”

H. Amend section 8-84(b)(1) as shown below:

“(b)(1) A permittee, as a condition of the permit, shall comply with the following source reduction and recycling requirements:

- (1) The permittee shall take all necessary steps to cause the industrial, commercial, multifamily residential units, and residential units who produce solid waste subject to the permit and the Act to divert solid waste as required by California Public Resources Code Section 41870 through source reduction, recycling and composting.“

SECTION 2: This Ordinance is intended to apply to existing holders of permits issued pursuant to section 8-77 and solid waste enterprises holding valid permits upon the effective date of this ordinance shall be deemed to be franchisees pursuant to section 8-87(b). At such time such franchisees shall pay any franchise fee imposed by City Council resolution pursuant to this ordinance. The increase in the length of a permit’s term from one year to seven years (evergreen) caused by this ordinance’s amendment to section 8-78(c) shall become operative as to existing permits on January 1, 2005, with new seven year terms beginning on that date.

SECTION 3: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance

together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ___ day of November, 2004.

ATTEST:

Deputy City Clerk of the City of Costa Mesa

Mayor of the City of Costa Mesa

APPROVED AS TO FORM

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 04-__ was introduced and considered section by section at a regular meeting of said City Council held on the __ day of _____, 2004, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the __ day of November, 2004, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2004.

Deputy City Clerk and ex-officio Clerk of
the City Council of the City of Costa Mesa