



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: NOVEMBER 20, 2007

ITEM NUMBER: VII-1

**SUBJECT:** ORDINANCE AMENDING TITLE 8 OF THE COSTA MESA MUNICIPAL CODE TO REDEFINE THE CLASSES OF WASTE HAULER FRANCHISES AND TO PROVIDE FOR PENALTIES FOR DELINQUENT PAYMENT

**DATE:** NOVEMBER 8, 2007

**FROM:** PUBLIC SERVICES ADMINISTRATION

**PRESENTATION BY:** WILLIAM J. MORRIS, DIRECTOR OF PUBLIC SERVICES

**FOR FURTHER INFORMATION CONTACT:** DONNA THERIAULT, MANAGEMENT ANALYST, AT 714-754-5024

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## **RECOMMENDATION:**

Give first reading to the attached Ordinance (Attachment 1) to amend Title 8 of the Municipal Code to redefine the classes of waste hauler franchises and to set penalties for delinquent or non-payment of franchise fees.

## **BACKGROUND:**

In November 2004, City Council adopted Ordinance 04-12 amending Title 8 of the Municipal Code to establish a Solid Waste Non-Exclusive Franchise and to provide for two classes of franchises for waste hauling services. In addition, Council approved Resolution No. 04-74 adopting related computation and collection procedures.

The existing structure for the two classes of non-exclusive franchises categorizes waste hauling companies by the type of equipment and service they provide. Class "A" franchisees provide recurring service to commercial, industrial and small multi-family residential complexes utilizing front loader and roll-off type vehicles. Class "B" franchisees provide short term or temporary dumpster service for residential and commercial sites utilizing roll-off container vehicles.

## **ANALYSIS:**

### Proposed Ordinance

#### I. Reclassify Existing Class "B" Waste Haulers:

The proposed Ordinance (Attachment 1) would reclassify existing Class "B" franchisees as Class "A" franchisees. Attachment 2 is the edited copy of Ordinance 04-12 showing the additions and deletions in strike-out and underlined text. While Class "B" franchisees operate different trash hauling equipment, and currently pay a lower minimum franchise fee, they basically provide the same service as the Class "A" franchisees and haul the same type of material, including putrescible waste. Grouping the two types of waste haulers in the same Class "A" franchise category, with the same minimum franchise fee,

would provide for an even playing field for the waste hauling companies. The minimum annual franchise fee for the five Class "A" franchisees is \$10,000 and is not proposed to be changed. There are currently fifteen Class "B" franchisees who currently pay a minimum franchise fee of \$1,500 per year. Approximately eight of them will now be required to pay the Class "A" fee if they choose to remain in operation in the City.

## II. Construction and Demolition Debris Haulers

Currently, the City is encountering construction and deconstruction companies that are hauling construction and demolition (C&D) debris utilizing "affixed" container vehicles such as dump trucks, end dump and belly dump vehicles. Since these companies do not use the same vehicles that the waste haulers use to haul the debris and are not primarily waste hauling companies, they have not been applying for a Costa Mesa waste hauling permit or franchise. However, they are taking the C&D waste to the landfill and that tonnage counts against the City in meeting the 50 percent recycling mandate. Also, SB 1374, passed in September 2005, requires cities to track and report on C&D debris as part of our annual AB 939 compliance report to the California Integrated Waste Management Board.

In order for City staff to capture the amount of C&D waste being hauled to the landfill and to require the construction and deconstruction companies to recycle 50 percent of the C&D debris, we are proposing to amend the municipal code to include the construction and deconstruction companies and to classify them as a Class "B" franchise.

## III. Proration of Fees and Penalties for Delinquent Franchise Fee Payment

Currently, the annual minimum franchise fee is due January 1 regardless of when a waste hauling company applies for their permit and franchise. Theoretically, under the current requirements, a waste hauling company would be required to pay the full minimum franchise fee in December, at the time of application, and then be required to pay another full year's minimum franchise fee again in January. The proposed Ordinance provides for a proration of the annual minimum franchise fee for the Class "A" franchisees depending on the time of permit/franchise application.

Since the implementation of the non-exclusive franchise system, the City has encountered difficulty in having the waste hauling companies report their gross receipts and pay the required franchise fees accurately and on time. Staff has been assessing penalties for late submittal as allowed by Resolution 04-74, however, legal staff felt it was more appropriate to provide for penalty assessment through the Costa Mesa Municipal Code rather than by resolution. Therefore, the proposed Ordinance also provides for penalties for delinquent payments and for failure to report the correct gross receipt information.

### **ALTERNATIVES CONSIDERED:**

Council could choose to not give first reading to the proposed Ordinance, or suggest other definitions and structures of the franchise classes.

### **FISCAL REVIEW:**

There is no cost to the City associated with the proposed amendment.

**LEGAL REVIEW:**

Legal staff has prepared and approved the Ordinance as to form.

**CONCLUSION:**

If the proposed Ordinance is approved by Council, the end result would be that all waste hauling companies providing recurring and temporary waste hauling service utilizing front loader and roll-off type equipment would be in the Class "A" franchise category. All construction and deconstruction companies utilizing "affixed" container vehicles would be in the Class "B" franchise category.

In order for the City to continue to meet its recycling responsibilities as mandated by the State, staff is requesting City Council give first reading to the attached Ordinance that redefines the non-exclusive waste hauling franchise classes to group traditional waste hauling companies in Class "A" and the construction and deconstruction waste haulers in Class "B". The proposed Ordinance also provides for the assessment of penalties for failure to report gross receipts and pay franchise fees accurately and timely.



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DONNA THERIAULT  
Management Analyst



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WILLIAM J. MORRIS  
Director of Public Services

**DISTRIBUTION:** City Manager  
City Attorney  
Director of Finance  
City Clerk  
Staff

**ATTACHMENTS:** 1 Proposed Ordinance  
2 Edited Copy of Ordinance 04-12

## ORDINANCE NO. 07-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF COSTA MESA, CALIFORNIA, AMENDING  
SECTION 8-87 OF THE COSTA MESA MUNICIPAL  
CODE RELATING TO SOLID WASTE FRANCHISE  
FEES

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

SECTION 1. Section 8-87 of the Costa Mesa Municipal Code is hereby deleted  
in its entirety and replaced by the following:

**Sec. 8-87. Franchise fee.**

(a) *Franchise required.* No solid waste enterprise shall collect or haul any solid waste along or across 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) *Franchise types.* Franchises for solid waste hauling, generally (Class A), and franchises for affixed container vehicle operators hauling construction and demolition waste (Class B) may be issued under this section.

(1) Holders of Class A franchises ("Class A franchisees") may operate any type of solid waste collection vehicle licensed and permitted by the State of California to collect, transport, remove, dispose and/or recycle any type of solid waste material generated by commercial, multi-family residential or industrial units within the city's waste disposal jurisdiction, except as provided in section 8-77(e)(7) of this article. Such franchisees have the exclusive right to place and collect bins and roll-off containers at commercial and industrial locations, excepting recycling firms that collect materials

free of charge or pay net positive revenue (inclusive of hauling fees) for the materials collected.

(2) Holders of Class B franchises ("Class B franchisees") may operate only affixed container vehicles permitted by the State of California to collect and transport non-putrescible and inert waste generated at construction and deconstruction sites. Class B franchisees are not allowed to provide drop-off containers or bins at these sites or any other site within the city's waste disposal jurisdiction. Class B franchisees are allowed to utilize sub-contractors to perform waste hauling services provided that those sub-contractors only operate affixed container vehicles that are permitted by the State of California for such purpose.

(d) *Franchise fee.* Every holder of a franchise issued pursuant to this section ("franchisee") shall pay a franchise fee as set by city council resolution based on the percentage of annual gross receipts. 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). This fee shall be prorated in the amount of two thousand five hundred dollars (\$2,500) per quarter beginning with the quarter in which the franchise is granted. Class B franchisees shall pay an annual minimum franchisee fee in the amount of one thousand five hundred dollars (\$1,500), which shall not be prorated. 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. Failure to timely pay franchise fees shall result in a penalty in the amount of five percent (5%) of the delinquent franchise fee owed, plus an additional one and one-half percent (1.5%) of the fee for each month, or any portion thereof, that payment is late. Failure to timely pay franchise fees may also result in the commencement of permit revocation proceedings. The annual minimum franchisee fee shall be credited only toward the franchise fees that accrue during the same calendar year in which the minimum fee is paid.

(e) *Franchise Fee Reports.* Every franchisee is required to submit a quarterly franchise fee report. Failure to submit a report within 45 days of the end of each calendar quarter shall result in a fine of one hundred fifty dollars (\$150) for each non-submittal. Submission of an incomplete report shall constitute a failure to submit a report and shall be subject to the \$150 fine for non-submittal.

(f) *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 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, the franchisee shall make such records available for city inspection at a location within the County, as determined by the city.

(g) *Audit requirements.* An independent auditing firm shall perform an audit, at the 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 of the city audit shall be set by city council resolution. If a city audit determines that a franchisee has not paid its full franchise fee, the city shall invoice the franchisee for the amount of the net deficiency plus a penalty fee equal to twenty percent (20%) of the net deficiency.

(h) *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.

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the

validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. 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 NEWPORT BEACH/COSTA MESA 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 \_\_\_\_\_, 2007.

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Allan R. Mansoor, Mayor

ATTEST:

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Julie Folcik, City Clerk

APPROVED AS TO FORM:

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Kimberly Hall Barlow, City Attorney

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

I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that foregoing is the original of Ordinance No. 07-\_\_ and was duly introduced for first reading at a regular meeting of the City Council held on the \_\_ day of \_\_\_\_\_, 2007, and that thereafter, said Ordinance was duly passed and adopted at a regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2007, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
JULIE FOLCIK, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. \_\_\_\_\_ duly passed and adopted by the Costa Mesa City Council at the regular meeting held \_\_\_\_\_, 2007, and that Summaries of the Ordinance were published in the Daily Pilot on \_\_\_\_\_ and \_\_\_\_\_, 2007.

\_\_\_\_\_  
JULIE FOLCIK, CITY CLERK

(SEAL)

## ORDINANCE 04-12

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF COSTA MESA, CALIFORNIA, AMENDING  
SECTION 8-87 OF THE COSTA MESA MUNICIPAL  
CODE RELATING TO SOLID WASTE FRANCHISES

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

SECTION 1

**Sec. 8-87. Franchise fee.**

(a) *Franchise required.* No solid waste enterprise shall collect or haul any solid waste along or across 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 types.* Franchises for solid waste hauling, generally (A eClass A), and franchises for affixed container vehicle operators hauling construction and demolition waste a (eClass B) franchise may be issued under this section.

(1) \_\_\_\_\_ Holders of eClass A franchises ("class A franchisees") may operate any and all types of licensed solid waste collection vehicles licensed and permitted by the State of California to collect, transport, remove, dispose and/or recycle any type of solid waste material generated by service commercial, multi-family residential or industrial units within the city's waste disposal jurisdiction, except as provided in section 8-77(e)(7) of this article. Such franchisees have the exclusive right to place and collect bins and roll-off containers at commercial and industrial locations, excepting recycling firms that collect materials free of charge or pay net positive revenue (inclusive of hauling fees) for the materials collected, temporary bin and industrial accounts within the city's waste disposal jurisdiction.

(2) —Holders of class B franchises ("class B franchisees") may operate only affixed container vehicles permitted by the State of California to collect and transport non-putrescible and inert waste generated at construction and deconstruction sites. Class B franchisees are not allowed to provide drop-off containers or bins at these sites or any other site within the City's waste disposal jurisdiction. Class B franchisees are allowed to utilize sub-contractors to perform waste hauling services provided that those sub-contractors only operate affixed container vehicles that are permitted by the State of California for such purpose. 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 based on the percentage of annual gross receipts. 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 (\$10,000.00). This fee shall be prorated in the amount of two thousand five hundred dollars (\$2,500) per quarter beginning with the quarter in which the franchise is granted. Class B franchisees shall pay an annual minimum franchisee fee in the amount of one thousand five hundred dollars (\$1,500.00) which shall not be prorated. 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. Failure to timely pay franchise fees shall result in a penalty in the amount of five percent (5%) of the delinquent franchise fee owed plus an additional one and one-half percent (1.5%) of the fee for each month, or any portion thereof, that payment is late. Failure to timely pay franchise fees may result in the commencement of permit revocation proceedings. 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) Franchise Fee Reports. Every franchisee is required to submit a quarterly franchise fee report. Failure to submit a report within 45 days of the end of each calendar quarter shall result in a fine of one hundred fifty dollars (\$150) for each non-submittal. Submission of an incomplete report

shall constitute a failure to submit a report and shall be subject to the \$150 fine for non-submittal.

(ef) *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 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.

(gg) *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. If a city audit determines that a franchisee has not paid its full franchise fee, the city shall invoice the franchisee for the amount of the net deficiency plus a penalty fee equal to twenty percent (20%) of the net deficiency.

(gh) *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.

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the

validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. 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 NEWPORT BEACH/COSTA MESA 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.

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Mayor of the City of Costa Mesa