

ORDINANCE NO. 07-19

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.

(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 4th day of December, 2007.

Allan R. Mansoor, Mayor

ATTEST:

Julie Folcik, City Clerk

APPROVED AS TO FORM:

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. 07-19 and was duly introduced for first reading at a regular meeting of the City Council held on the 20th day of November, 2007, and that thereafter, said Ordinance was duly passed and adopted at a regular meeting of the City Council held on the 4th day of December, 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 5th day of December, 2007.

JULIE FOLCIK, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 07-19 duly passed and adopted by the Costa Mesa City Council at the regular meeting held

December 4, 2007, and that Summaries of the Ordinance were published in the Daily Pilot on _____ and _____, 2007.

JULIE FOLCIK, CITY CLERK

(SEAL)