



CITY COUNCIL AGENDA REPORT

MEETING DATE: JULY 6, 2010

ITEM NUMBER: **VII-3**

SUBJECT: ADOPTION OF RESOLUTION AMENDING THE SOLID WASTE HAULING FRANCHISE FEE

DATE: JUNE 30, 2010

FROM: FINANCE DEPARTMENT/ADMINISTRATION

PRESENTATION BY: BOBBY YOUNG, BUDGET AND RESEARCH OFFICER

FOR FURTHER INFORMATION CONTACT: BOBBY YOUNG AT (714) 754-5241

RECOMMENDED ACTION:

Adopt the attached resolution amending the Solid Waste Hauling Franchise Fee.

BACKGROUND:

In November 2004, City Council amended Title 8 of the Municipal Code and adopted a Solid Waste Hauler (Non-Residential) Franchise Fee. The Solid Waste Hauler (Non-Residential) Franchise Fee is a fee that is imposed upon non-exclusive franchisees for the purpose of commercial solid waste handling services within the City. Generally, a franchise fee is a fee paid to a municipality from a franchisee for "rental" or "toll" for the use of city streets and rights-of-way. Revenues generated from imposition of a Solid Waste Hauling Franchise Fee are unrestricted and deposited into the City's General Fund and used for many purposes.

The Solid Waste Hauler (Non-Residential) Franchise Fee adopted in November 2004 was:

- 1.) Minimum franchise rate – Class A = \$10,000, Class B = \$1,500, and
- 2.) amount equal to 12% of the annual gross receipts of a franchisee from it's business conducted in the City of Costa Mesa.

As a matter of comparison to other local cities:

Newport Beach – 16% (Non-exclusive franchise for commercial, no franchise for residential)

Santa Ana – 25% (Exclusive franchise for both commercial and residential)

Huntington Beach – 5% (Exclusive franchise for both commercial and residential)

Fountain Valley – 5% (Exclusive franchise for both commercial and residential)

Irvine – 10% (Non-exclusive franchise for commercial, exclusive franchise for residential)

ANALYSIS:

At the June 22, 2010 City Council meeting, Council directed staff to prepare the necessary resolution for Council action to increase the City's Solid Waste Hauler (Non-Residential) Franchise Fee to 16% of the annual gross receipts of a franchisee from it's business conducted in the City of Costa Mesa.

Currently, the City receives approximately \$1.3 million or \$108,000 per 1% from Solid Waste Hauler Franchise Fee payments. Therefore an increase from 12% to 16%, or a 4% increase, would result in an increase of approximately \$432,000 in estimated revenue from Solid Waste Hauler Franchise Fee payments.

Currently, waste hauler's remit the fees on a quarterly basis. For purposes of implementation and notification, staff is proposing the rate change be effective October 1, 2010. This date is the beginning of the next quarter and would provide staff and the hauler's ample time for notification and ability to make necessary changes to paperwork.

ALTERNATIVES

City Council may elect to increase the rate to an amount lower than the 16% proposed. Each 1% increase is estimated to increase revenues \$108,000. Or, Council may choose to take no action on the proposed ordinance or fee resolution and receive and file the report.

FISCAL REVIEW

Increasing the Solid Waste Hauling Franchise Fee rate would generate approximately \$108,000 per 1%. Therefore, amending the rate to 16%, a 4% increase, would result in an increase of approximately \$432,000 annually in estimated revenue.

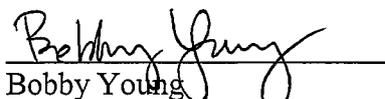
LEGAL REVIEW

The attached fee resolution has been reviewed and approved as to form and content by the City Attorney's Office.

CONCLUSION:

At the June 22, 2010 City Council meeting, Council directed staff to prepare the necessary resolution for Council action to amend the City's Solid Waste Hauler (Non-Residential) Franchise Fee from 12% to 16% of the annual gross receipts of a franchisee from it's business conducted in the City of Costa Mesa. Each 1% increase in the fee would result in an increase of approximately \$108,000 in estimated revenue.

Therefore, adopting the attached resolution and establishing the rate at 16%, a 4% increase, would result in an increase of approximately \$432,000 annually in estimated revenue.


Bobby Young
Budget and Research Officer

Attachment 1: Proposed Fee Resolution

Copy to: Department Directors

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING THE SOLID WASTE HAULING FRANCHISE FEE.

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

WHEREAS, the City Council of the City of Costa Mesa adopted Ordinance No. 04-12 on November 1, 2004, that requires solid waste enterprises operating within the City to obtain a City franchise and pay a franchise fee; and

WHEREAS, Ordinance No. 04-12 also provides in Municipal Code section 8-87 (c) that the amount of the franchise fee will be set by City Council resolution and the City Council hereby desires to set a new fee amount and adopt related procedural provisions for the fee's computation and collection.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COSTA MESA AS FOLLOWS:

SECTION 1. FRANCHISE FEE.

- a. The previously adopted franchise fee is hereby increased to the amount of 16% of the annual gross receipts of a franchisee from its business conducted in the City of Costa Mesa. For the purpose of this resolution, gross receipts means and includes all monies, fees, charges, consideration, and revenue received by, or imputed to the franchisee and any affiliates, parent companies, subsidiaries and/or subcontractors of the franchisee, in connection with, arising from, or in any way attributable to the

services carried out by or on behalf of the franchisee pursuant to a franchise granted under Costa Mesa Municipal Code section 8-87.

- b. This fee shall be paid quarterly by each franchisee to the City Finance Department ("Department"). Each payment shall be due within 30 days of the end of each calendar quarter, i.e. payments for the four quarters shall be due on April 30, July 30, October 30, and January 30 of each calendar year. Whenever the last day of a fixed and final period falls on a Saturday, Sunday or other legal Holiday, the due date will be extended to 5:00 pm of the next business day. Franchisees shall include with each payment the financial data requested by the Department for verifying that the amount of the fee complies with this resolution.
- c. The franchisee shall pay a penalty for any late payment of a franchise fee in the amount of 5% of the delinquent franchise fee owed, plus an additional 1 1/2 % of the fee for each month, or any portion of a month, that the payment is late.
- d. No franchisee shall itemize the amount of the franchise fee as a separate amount or line-item in its bills to customers.

SECTION 2. FINANCIAL AUDITS OF FRANCHISEES.

- a. The Department may order a financial audit of any franchisee pursuant to Costa Mesa Municipal Code ("CMMC") section 8-87 (f). The City Audit shall include a review of the franchisee's cash receipts records, solid waste tonnage collection, diversion, and other related records, as well as those of each of its parent, subsidiary and/or affiliate companies, as appropriate, to determine the franchisee's gross receipts, the accuracy of franchise fees

paid, and such other information as shall be deemed appropriate by the City Finance Director to evaluate the franchisee's compliance with section 8-87. In connection with a City Audit, franchisees shall make available for review at their business offices detailed account records, such as the names and addresses of customers.

- b. If a City Audit determines 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.
- c. A franchisee shall reimburse the City for the cost of a City Audit if the audit determines that the franchise fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee. Such reimbursement shall be paid by the franchisee within thirty (30) days of the date the City notifies the franchisee in writing of the amount of the City's cost of the audit.

SECTION 3. REPEAL OF PRIOR RESOLUTION. Effective October 1, 2010, City Council resolution No. 04-74 establishing the prior franchise fee for commercial waste haulers doing business in the City of Costa Mesa shall be repealed.

SECTION 4. EFFECTIVE DATE OF FRANCHISE FEE. The franchise fee rate set by this Resolution shall commence on October 1, 2010, and the first quarter fees shall be due to the City on January 30, 2011. Failure to pay any franchise fees or penalties assessed to a franchisee shall constitute grounds for revocation of the franchise pursuant to CMMC section 8-79.

PASSED AND ADOPTED this 6th day of July, 2010.

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, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 10-____ and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 6th day of July, 2010, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 7th day of July, 2010.

JULIE FOLCIK, CITY CLERK