



# **CITY COUNCIL AGENDA REPORT**

MEETING DATE: OCTOBER 5, 2010

ITEM NUMBER: VII-2

**SUBJECT:** AMENDING ARTICLE 1 OF TITLE 8 OF THE COSTA MESA MUNICIPAL CODE  
REGULATING SOLID WASTE COLLECTION

**DATE:** SEPTEMBER 22, 2010

**FROM:** PUBLIC SERVICES/ADMINISTRATION

**PRESENTATION BY:** PETER NAGHAVI, DIRECTOR OF PUBLIC SERVICES

**FOR FURTHER INFORMATION CONTACT:** JOCELYN SCHAMBER, MANAGEMENT ANALYST  
714-754-5024

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## **RECOMMENDATION:**

Give first reading to Ordinance 10-\_\_ of the Costa Mesa Municipal Code (Attachment 1).

## **BACKGROUND:**

In 1993, the City of Costa Mesa established a permit system to assist in the management of solid waste hauling. Since its inception and evolution into a non-exclusive franchise, the City's hauling permit system has had difficulty incorporating all waste haulers into the fold. Historic efforts to curb illegal hauling, such as City-issued warning letters to identified illegal haulers and periodic sweeps from the City's solid waste consultant, have never secured complete hauler compliance. Currently, illegal hauling accounts for approximately 10 percent of the City's total waste stream and represents nearly \$200,000 in lost franchise fee revenue to the City.

Construction and demolition haulers have proven particularly difficult to bring into the franchise. These haulers are important to any solid waste management system because construction and demolition waste is highly recyclable; the statewide average is 70 percent recycled materials per project. While these recyclables do not contribute directly towards City diversion requirements, 100 percent of the waste illegal haulers dispose counts against the City. The City's franchised haulers must divert at least 50 percent of the waste they haul, while illegal haulers operate under no diversion requirements. Since disposal is a less time-consuming and cheaper alternative to recycling, many of these highly recyclable construction and demolition materials are dumped in the landfill. In addition, the City has no way of quantifying any diversion credit received by these haulers and no way of addressing this sector of the City's waste stream in annual reports to the State.

As both the City's illegal-hauling and waste-reporting concerns could be mitigated by creating a construction and demolition debris tracking system, at its meeting of August 17, 2010, the City Council approved the development and implementation of such a system (Attachment 2).

## **ANALYSIS:**

The construction and demolition debris tracking system will require contractors to use a City permitted hauler to haul waste from designated construction and demolition projects. By requiring use of a franchised waste hauler that meets the 50-percent diversion mandate, the City is complying with Senate Bill 1374, which requires municipalities to track construction and demolition waste as part of their AB 939 diversion compliance. The keys are enforcing City ordinances by requiring proof that a franchised hauler was used and creating an effective deterrent by imposing an administrative fee if such a hauler was not used.

The tracking system will consist of a one-page construction/demolition project hauling agreement form, hauler receipts, and sign-off requirements for all designated construction projects to receive an occupancy permit. All contractors applying for a permit to perform construction or demolition projects valued at \$10,000 or greater will be required to submit proof, in the form of invoices, that a City permitted hauler was used to haul all solid waste removed from the job site. Failure to provide the required proof will constitute a violation of the Costa Mesa municipal code and will be subject to a fine of \$1,000 or 3 percent of the total project value, whichever is greater. This fine will be due and payable before an occupancy permit or final City approval of the project is granted. Through this system and its fee for non-compliance, the occupancy permit process is not delayed, but contractors are financially deterred from using a non-permitted hauler.

To proceed with its recommendation to implement a construction and demolition debris tracking system, the City Council must revise Section 8-83 of the Costa Mesa Municipal Code to include the following subsection:

- (h) For any type of solid waste collection in the City, it shall be unlawful for any person to use the services offered by a person, service, or enterprise that has not obtained all the required permits from the City pursuant to this article.

## **ALTERNATIVES CONSIDERED:**

None.

## **FISCAL REVIEW:**

The adoption of this ordinance does not have any fiscal impact to the City.

## **LEGAL REVIEW:**

The City Attorney's Office has recommended, reviewed, and approved the changes to the Costa Mesa Municipal Code.

**CONCLUSION:**

Implementing a construction and demolition debris tracking system will bring many benefits to the City, including a reduction in illegal waste-hauling; the ability to account for construction and demolition waste, per Senate Bill 1374 requirements, and the ability to account for this waste's ample recyclable materials; and an increase in franchise fee revenue.

Staff recommends that the City Council give first reading to Ordinance 10-\_\_ of the Costa Mesa Municipal Code amending Article 1 of Title 8, Section 8-83 to make it unlawful to use a waste hauler that is not permitted by the City to collect solid waste.



JOCELYN SCHAMBER

Management Analyst



PETER NAGHAVI

Public Services Director



KIMBERLY BRANDT

Development Services Director

KIMBERLY HALL BARLOW

City Attorney

- ATTACHMENTS:
- 1 Ordinance 10-\_\_
  - 2 City Council Agenda Report: August 17, 2010
  - 3 Construction/Demolition Project Hauling Agreement
  - 4 Costa Mesa Municipal Code Section 8-83

## ORDINANCE NO. 10-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING ARTICLE 1 OF TITLE 8 OF THE COSTA MESA MUNICIPAL CODE REQUIRING THE USE OF CITY PERMITTED SOLID WASTE HAULERS FOR COLLECTION SERVICES IN THE CITY OF COSTA MESA**

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

Section 1. Article 1 of Title 8 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 8-83, Regulations, to include the following subsection:

“(h) For any type of solid waste collection in the City, it shall be unlawful for any person to use the services offered by a person, service, or enterprise that has not obtained all the required permits from the City pursuant to this article.”

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 the extent necessary to affect 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 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 \_\_\_\_\_, 2010

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\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the  
City of Costa Mesa  
STATE OF CALIFORNIA)  
COUNTY OF ORANGE) ss  
CITY OF COSTA MESA)

\_\_\_\_\_  
City Attorney

I, Julie Folcik, 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. 10-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2010, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2010, by the following roll call vote:

AYES:

NOES:

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ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
City Clerk and ex-officio  
Clerk of the City Council of the  
City of Costa Mesa



# ***CITY COUNCIL AGENDA REPORT***

MEETING DATE: AUGUST 17, 2010

ITEM NUMBER:

**SUBJECT:** CONSTRUCTION AND DEMOLITION DEBRIS TRACKING SYSTEM

**DATE:** AUGUST 5, 2010

**FROM:** PUBLIC SERVICES/ADMINISTRATION

**PRESENTATION BY:** PETER NAGHAVI, DIRECTOR OF PUBLIC SERVICES

**FOR FURTHER INFORMATION CONTACT:** JOCELYN SCHAMBER, MANAGEMENT ANALYST  
714-754-5024

## **RECOMMENDATION:**

Authorize development and implementation of a construction and demolition debris tracking system.

## **BACKGROUND:**

In 1993, the City of Costa Mesa established a permit system to assist in the management of solid waste hauling. Since its inception and evolution into a non-exclusive franchise, the City's hauling permit system has had difficulty incorporating all waste haulers into the fold. As it stands, illegal hauling accounts for approximately 10 percent of the City's total waste stream and represents nearly \$200,000 in lost franchise fee revenue to the City. To put the issue in perspective, the total annual waste disposed by illegal haulers would place this group as the third largest hauling entity in the City.

Historically, the City has used its solid waste consultant to do periodic sweeps to find evidence of illegal hauling, such as dumpsters or roll-off containers from non-permitted haulers. While this effort identified a number of illegal haulers and brought several into the franchise system, it has never secured complete hauler compliance. Dozens of identified illegal hauling incidents have shown a disturbing trend: haulers ignore City warning notices and continue to operate. Similarly, a number of illegal haulers that were brought into the franchise quickly dropped out of the system, though they remain active hauling entities.

While the number of Costa Mesa's permitted haulers has fallen to ten—half of the historic high—the neighboring city of Newport Beach, which uses the same basic requirements in its non-exclusive franchise, maintains 27 haulers. Many of these are construction and demolition waste haulers that once held permits in Costa Mesa. The difference between the two systems is, once haulers are accepted into Newport Beach's franchise, the City of Newport Beach must dismiss them; there is no opt-out, such as Costa Mesa's annual permit renewal process. Franchised demolition and

construction haulers paid \$175,000 in franchise fees to Newport Beach in 2008, whereas this group of haulers paid \$44,500 in franchise fees to Costa Mesa.

Construction and demolition haulers are important to any solid waste management system because construction and demolition waste is highly recyclable; the statewide average is 70 percent recycled materials per project. While these recyclables do not contribute directly towards City diversion requirements 100 percent of the waste illegal haulers dispose counts against the City. The City's franchised haulers must divert at least 50 percent of the waste they haul, while illegal haulers operate under no diversion requirements. Since disposal is a less time-consuming and cheaper alternative to recycling, many of these highly recyclable construction and demolition materials are dumped in the landfill. In addition, the City has no way of quantifying any diversion credit received by these haulers and no way of addressing this sector of the City's waste stream in annual reports to the State.

### **ANALYSIS:**

Both the City's illegal-hauling and waste-reporting concerns can be mitigated by creating a construction and demolition debris tracking system. This system will require contractors to use a City permitted hauler to haul waste from designated construction and demolition projects.

Via Senate Bill 1374 (passed in 2002), the State of California *requires municipalities to track construction and demolition waste as part of their AB 939 diversion compliance*. This legislation also strongly urges municipalities to adopt construction and demolition ordinances requiring at least 50-percent diversion for all designated projects. The City of Costa Mesa, by requiring use of a franchised waste hauler that meets the 50-percent diversion mandate, is using existing City ordinances to show compliance with Senate Bill 1374. The key is enforcing current ordinances by requiring proof that a franchised hauler was used and creating an effective deterrent by imposing an administrative fee if such a hauler was not used.

The tracking system will consist of a one-page construction/demolition project hauling agreement form, hauler receipts, and sign-off requirements for all designated construction projects to receive an occupancy permit. All contractors applying for a permit to perform construction or demolition projects valued at \$10,000 or greater will be required to submit proof, in the form of invoices, that a City permitted hauler was used to haul all solid waste removed from the job site. Failure to provide the required proof will constitute a violation of the Costa Mesa municipal code and will be subject to a fine of \$1,000 or 3 percent of the total project value, whichever is greater. This fine will be due and payable before an occupancy permit or final City approval of the project is granted. Through this system and its fee for non-compliance, the occupancy permit process is not delayed, but contractors are financially deterred from using a non-permitted hauler.

Many other Orange County cities have similar construction and demolition debris tracking systems designed to curtail illegal hauling, to fulfill Senate Bill 1374 requirements, and to help cities meet their mandated 50-percent solid waste diversion requirements. Sample cities include Mission Viejo, Rancho Santa Margarita, Tustin,

Brea, and in particular, the City of Huntington Beach, which adopted an ordinance making it illegal for an individual to hire a non-permitted waste hauler. Costa Mesa's tracking system will operate in much the same way, so there is ample precedent.

Additionally, implementing this system will not increase hauler service rates in Costa Mesa because the non-exclusive franchise fosters competitive pricing. Costa Mesa is one of only three cities in the County that provides contractors a franchise system where competitive bids can be received for ten haulers.

**ALTERNATIVES CONSIDERED:**

Make no provisions to track construction and demolition hauling. This will result in continued non-compliance with Senate Bill 1374 and continued inability to track the source of disposed and diversion tonnage from the City's jurisdiction, which may also threaten the City's compliance with California's Assembly Bill 939 solid waste diversion mandate. Not changing the system will also result in continued loss of revenue due to haulers operating without paying the required franchise fee.

**FISCAL REVIEW:**

The debris tracking system is expected to increase franchise fee revenue with minimal impact to staff time.

**LEGAL REVIEW:**

None.

**CONCLUSION:**

Implementing a construction and demolition debris tracking system will bring many benefits to the City, including a reduction in illegal waste-hauling; the ability to account for construction and demolition waste, per Senate Bill 1374 requirements, and the ability to account for this waste's ample recyclable materials; and an increase in franchise fee revenue.

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JOCELYN SCHAMBER  
Management Analyst

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PETER NAGHAVI  
Public Services Director

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COLLEEN O'DONOGHUE  
Assistant Finance Director

CITY OF COSTA MESA  
 CONSTRUCTION/DEMOLITION PROJECT HAULING AGREEMENT

CITY ASSIGNED PROJECT PERMIT #:

DATE:

PROJECT ADDRESS:

Prior to receiving final occupancy approval from the City of Costa Mesa, the designated contractor must submit proof that a City permitted hauler was used to the Building Department. The contractor is required to demonstrate compliance by attaching all hauling receipts/invoices for any debris or solid waste hauled off the jobsite listed above. A list of currently permitted haulers is provided with this form or can be obtained by calling the City's Public Services Department (714-754-5024). Pursuant to Section 8-77 of the CMMC non-permitted hauling is illegal in the City of Costa Mesa.

**DESIGNATED PROJECT CONTRACTOR INFORMATION (please type or print clearly)**

Business Name/DBA: _____		Phone: _____	
Business Address: _____			
Contact Person: _____		Title: _____	
Project Start Date: _____		Project Completion Date: _____	
Collection Service Needed (circle all that apply):      Bin                      Roll-Off                      Other			
Estimated volume or weight of materials to be hauled off-site: _____			

Use of a City permitted hauler for this project is the responsibility of the contractor designated on this form. Non-compliance is subject to the following administrative penalty:

**\$1,000 or 3% of the total project value, whichever is greater**

I am the authorized representative of the listed project contractor and I agree to all conditions herein:

Signature

Date

Attach proof of compliance to this form and deliver to:  
 City of Costa Mesa Building Department, 77 Fair Drive - 4th Floor, Costa Mesa, CA 92628

**For City Staff Use Only - Do Not Write In Box Below**

Contractor Provided Proof of Compliance:		YES	NO	<i>If "NO" then administrative penalty is required</i>	
Administrative Penalty Calculation (if applicable):					
Total Project Value \$ _____ x 3% =		\$ _____	OR	\$1,000	
<i>Pay Larger Amount</i>					
Final Project Disposition: (check appropriate box)	<input type="checkbox"/>	Provided Required Proof of Compliance			
	<input type="checkbox"/>	Paid Administrative Penalty - Amount Paid:		\$ _____	
Staff Sign-Off: _____					Date

**Sec. 8-83. - Regulations.**

- (a) It shall be unlawful for any person to place, deposit, dump or cause to be placed, deposited or dumped any solid waste, hazardous waste or infectious waste in or upon any private property or in or upon any public property which the public is admitted by easement or license without the consent of the owner, or in or upon any public highway, street, alley, sidewalk, gutter, parkway or upon any private road, alley, sidewalk, gutter or driveway in common use, or upon any public property other than property designated or set aside as a disposal station for such purpose by resolution of the city council or county board of supervisors.
- (b) It shall be unlawful for any person to place, deposit or dump solid waste, hazardous waste or infectious waste of any kind whatsoever upon any private or public property within a distance of one thousand (1,000) feet from any public highway in the city, or within a distance of five hundred (500) feet from any established residence or dwelling house within the city, or to cause or suffer or permit such solid waste, hazardous waste or infectious waste to be placed, deposited or dumped upon any public or private property within a distance of one thousand (1,000) feet of any public highway or within a distance of five hundred (500) feet of any established residence or dwelling house in the city, without first having obtained a use permit pursuant to the zoning laws of the city, county, and State of California, or pursuant to any other zoning law that may be hereafter adopted in the place and stead of said zoning laws of the city. The provisions of this subsection shall not apply to solid waste, hazardous waste or infectious waste placed into a container for pickup by a solid waste enterprise operating pursuant to a permit issued under this article.
- (c) No person shall burn any solid waste, hazardous waste or infectious waste within the city without having first complied with all rules and regulations of the city, the county, the South Coast Air Quality Management District and the state.
- (d) No person shall scavenge or bury any solid waste, hazardous waste or infectious waste within the city.
- (e) Special arrangements must be made and permits issued by the county, State of California, and federal agencies for the disposal of any of the following items: Ammunition; explosives; industrial waste; chemicals; infectious; hazardous and radioactive waste; acids; drugs; medicines; human feces; unwrapped animal feces; and items which are too large for the collection equipment or which may damage the collection machinery such as large pieces of metal, machine parts, logs and tree stumps.
- (f) Branches of trees, hedges, etc., shall be cut in lengths of not over four (4) feet and placed in containers or tied into bundles not exceeding fifty (50) pounds. All vacuum cleaner dust sweepings or ashes shall be wrapped and placed in the container. Newspapers and magazines may be bundled in bundles not exceeding fifty (50) pounds maximum. All metal containers may be placed in an enclosed container or wrapped in bundles not exceeding fifty (50) pounds maximum. In areas of curbside refuse collection, the requirements of this subsection are superseded by any requirements of the CMSD.
- (g) It shall be unlawful for a person or solid waste enterprise to commingle solid waste collected from within the jurisdiction of the City of Costa Mesa with solid waste collected from any other jurisdiction. A violation of this subsection shall result in the revocation of the permit pursuant to section 8-79.

*(Ord. No. 92-31, § 2, 1-18-93; Ord. No. 97-24, § 2, 8-4-97)*