



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 19, 2010

ITEM NUMBER: VI-9

SUBJECT: AMENDING THE SOLID WASTE HAULER FRANCHISE FEE RESOLUTION 10-53

DATE: SEPTEMBER 30, 2010

FROM: FINANCE DEPARTMENT, OPERATIONS DIVISION

PRESENTATION BY: COLLEEN O'DONOGHUE, ASSISTANT FINANCE DIRECTOR

FOR FURTHER INFORMATION CONTACT: COLLEEN O'DONOGHUE, ASSISTANT FINANCE DIRECTOR, (714)754-5219

RECOMMENDED ACTION:

Adopt Resolution 10-XX amending Resolution 10-53 to read as set forth in Attachment 1.

BACKGROUND:

In November 2004, City Council amended Title 8 of the Municipal Code, and adopted a Solid Waste Hauler (non-residential) Franchise Fee. The Franchise Fee is imposed upon non-exclusive franchisees for the purpose of commercial solid waste handling services within the City. In December 2007, City Council amended Title 8 to redefine the classes of waste hauler, to set penalties for delinquent payments, and to clarify the due dates of franchise fee reports and payments. On July 6, 2010, City Council approved a resolution amending the Solid Waste Hauler Franchise Fee to increase the franchise fees from 12% to 16%.

ANALYSIS:

At the July 6, 2010 City Council meeting, Council approved an increase in the solid waste hauler franchise fees. The resolution was intended to only increase the franchise fees from 12% to 16%. However, the resolution inadvertently reversed some changes made in a December 2007 resolution amending the due dates of franchise fee reports and payment submittal and removing references to penalties and late payment fees which are set by Ordinance No. 07-19. The changes in the submitted resolution are mainly technical corrections as outlined in the redline version attached.

ALTERNATIVES CONSIDERED

No further alternatives were considered.

FISCAL REVIEW

No fiscal impact.

LEGAL REVIEW

The City Attorney has reviewed and approved the attached resolution as to form.

CONCLUSION:

Adopt the attached resolution, to amend Resolution 10-53 to read as set forth in Attachment 1.



COLLEEN O'DONOGHUE
Assistant Finance Director

Resolution 10-XX

Attachment 1: Amended Resolution 10-53

Attachment 2: Redline version of Resolution 10-53

Attachment 3: Ordinance No. 07-19

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF COSTA MESA, CALIFORNIA, AMENDING
RESOLUTION 10-53

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

WHEREAS, at its meeting of July 6, 2010, the City Council adopted Resolution
10-53 increasing the solid waste hauler franchise fee; and

WHEREAS, Resolution 10-53 included some language which inadvertently
changed reporting and payment dates and included unnecessary language regarding
penalties and late payments that are established by Ordinance; and

WHEREAS, it is desirable to amend Resolution 10-53 to remove the
inadvertent changes and eliminate the unnecessary language regarding penalties
and late payments in order to avoid confusion.

NOW THEREFORE, BE IT RESOLVED that the City of Costa Mesa City
Council that Resolution 10-53 is amended as set forth in Attachment 1 to this Resolution.

PASSED AND ADOPTED this 19th day of October, 2010.

Allan R. Mansoor, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, City Clerk

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 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 19th day of October, 2010, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 20th day of October, 2010.

JULIE FOLCIK, CITY CLERK

RESOLUTION NO. 10-53

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 15, 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.

WHEREAS, the City Council has adopted Ordinance No. 07-19 on December 4, 2007 setting the penalties for late or incorrect payment of franchise fees, and

WHEREAS, the City Council desires to clarify the due dates of the quarterly franchise fee payments and remove reference to penalties and late payment fees which are set by Ordinance.

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 31, October 31, and January 31 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. 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. 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 and 07-91 establishing the prior franchise fee for commercial waste haulers doing business in the City of Costa Mesa shall be repealed and amending and restating Resolution 10-53 which was adopted at a Public Hearing on July 6, 2010.

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 31, 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.

Allan R. Mansoor, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, City Clerk

Kimberly Hall Barlow, City Attorney

RESOLUTION NO. 10-53

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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.

WHEREAS, the City Council has adopted Ordinance No. 07-19 on December 4, 2007 setting the penalties for late or incorrect payment of franchise fees, and

WHEREAS, the City Council desires to clarify the due dates of the quarterly franchise fee payments and remove reference to penalties and late payment fees which are set by Ordinance.

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~~ 31, October ~~30~~ 31, and January ~~30~~ 31 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.~~
- c. No franchisee shall itemize the amount of the franchise fee as a separate amount or line-item in its bills to customers.

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- 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.~~

~~e.b. _____ 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.~~

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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~~ 31, 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.

Allan R. Mansoor, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, City Clerk

Kimberly Hall Barlow, City Attorney

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:



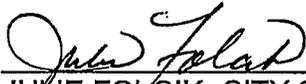
Kimberly Hall Barlow, City Attorney

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

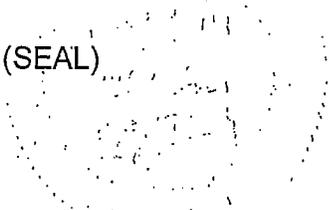
I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Ordinance No. 07-19 was duly introduced for first reading at a regular meeting of the City Council held on the 20th day of November, 2007, and that thereafter, said Ordinance was duly passed and adopted 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:

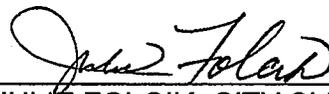
IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 5th day of December, 2007.



JULIE FOLCIK, CITY CLERK

(SEAL)


I hereby certify that the above and 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 Newport Beach-Costa Mesa Daily Pilot on November 26, 2007 and December 12, 2007.



JULIE FOLCIK, CITY CLERK

(SEAL)
