



# *CITY COUNCIL AGENDA REPORT*

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MEETING DATE: OCTOBER 18, 2004

ITEM NUMBER:

**SUBJECT: DRAFT ORDINANCE AMENDING TITLE 8 OF THE COSTA MESA MUNICIPAL CODE REGARDING ADOPTION OF A SOLID WASTE HAULING FRANCHISE FEE**

**DATE: OCTOBER 13, 2004**

**FROM: FINANCE DEPARTMENT/ADMINISTRATION**

**PRESENTATION BY: MARC R. PUCKETT, DIRECTOR OF FINANCE**

**FOR FURTHER INFORMATION CONTACT: MARC R. PUCKETT (714) 754-5243**

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## **RECOMMENDED ACTION:**

- 1) Continue consideration of adoption of a Solid Waste Hauling Franchise Fee to the City Council meeting of November 1, 2004.
- 2) Direct staff to prepare a revised ordinance for first reading to amend Title 8 of the Costa Mesa Municipal Code by adding section 8-87 adopting a Solid Waste Hauling Franchise Fee.

## **BACKGROUND:**

Staff presented a report regarding consideration of potential new revenue sources at a Council Study Session. These potential new revenue sources were deemed necessary to protect erosion of the City's tax base due to state actions and economic considerations. All potential new revenue sources were proposed as enhancements to the general unrestricted undesignated revenue in the General Fund. After presentation to Council at the study session, the matter was to be brought forward to Council at a future Council meeting for further consideration.

At the April 12, 2004, City Council meeting, Council indicated that they were interested in considering the Solid Waste Hauling Franchise Fee, Fire-Med Subscription Fee, Business License Tax and Transient Occupancy Tax further. Staff was directed to meet with stakeholders and bring this matter back to Council for further consideration at the July 6, 2004, Council meeting.

Staff met with major stakeholders regarding the revenue increase proposals. Included in these stakeholders meetings were representatives from the Costa Mesa Chamber of Commerce, Costa Mesa Convention and Visitors Bureau, and all waste haulers permitted in Costa Mesa.

At the July 6 City Council meeting, Council directed staff to proceed with implementation of the Fire-Med Subscription Fee program using the "private" model and, at the August 2 City Council meeting, Council directed staff to proceed with implementation of the Solid Waste Hauling Franchise Fee.

Staff was directed to bring both items back to Council for consideration of the implementation actions required within 120 days of adoption.

Council approved first reading of the proposed Solid Waste Hauling Franchise Fee Ordinance at the October 4, 2004, City Council meeting.

**ANALYSIS:**

The Solid Waste Hauling Franchise Fee is summarized herein. A description of the Solid Waste Hauling Franchise Fee, taxing authority, overview of the fee, and estimated revenue collections are included below for informational purposes. The Solid Waste Hauling Franchise Fee can be implemented by City Council by adopting the attached ordinance enabling the fee to be levied and a resolution setting the amount of the fee.

**Description:** The Solid Waste Hauling Franchise Fee is a fee that may be imposed upon exclusive or non-exclusive franchisees for the purposed of residential and 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 may be used for any purpose.

**Authority:** The authority to enact such franchise fees is found within the Public Resources Code sections 49520 through 49523. Further, adoption of a Solid Waste Hauling Franchise Fee Ordinance is necessary to set forth specific requirements for prospective franchisees.

**Overview:** Of the 34 cities in Orange County, 31 have Solid Waste Hauling Franchise Fees. The franchise fee may be levied on either an exclusive or non-exclusive basis.

Staff is proposing a non-exclusive franchise fee. Such a structure for the franchise fee will allow the trash haulers to set their own rates without any controls by the City, thus preserving the free market system. Further, a non-exclusive franchise fee will provide for a means of monitoring the waste hauler rates to determine if in fact, waste hauler rates in Costa Mesa are indeed lower or higher than other communities with Solid Waste Hauling Franchise Fees. A Solid Waste Hauling Franchise Fee may be imposed upon residential, commercial and industrial waste haulers.

Prior to the first reading on the ordinance, Staff met with the waste haulers currently working in the City to review the proposed Solid Waste Hauling Franchise Fee Ordinance. Subjects of this meeting included length of the franchise agreement and permit, level of the fee and allocation basis of the fee (i.e. gross sales or tonnage).

In this meeting with the waste haulers, the haulers expressed that they understood the reasons why such a fee is being considered at this time and expressed a willingness to cooperate with the City on levying such a fee if it were tied to an increase in the length of the existing permit for refuse collection. At present, the City limits the permits to one year in length.

Subsequent to the October 4, 2004, Council meeting, staff held additional meetings with the waste haulers to further discuss the proposed ordinance and elements intended to be incorporated into a proposed fee resolution. Waste Haulers had requested that staff consider certain proposed changes to the Ordinance.

As a result of these meetings, staff concluded that material changes may need to be made in the proposed ordinance requiring that the proposed ordinance be re-noticed for first reading. Some of the topics discussed with the waste haulers regarding the proposed ordinance and elements to be included in the fee resolution are discussed below.

#### 1. Audit requirements.

The haulers requested that any audit for the purpose of verifying the gross sales upon which the franchise fee was paid should be limited to auditing solely Costa Mesa gross sales. Additionally, a definition of gross receipts will need to be incorporated into the proposed Ordinance. Further, it was requested that the City enter into a confidentiality agreement prior to any such audit to ensure that the haulers' books and records would not be disclosed as public records. The haulers also requested that the cost of such an audit be rolled into the franchise fee and that all haulers be audited equally. As proposed, all haulers would be audited after the first year and then once every three years thereafter as necessary. In addition, the haulers asked that due notice be provided by certified mail no less than ten days prior to initiation of any audit. The haulers also requested that a dollar limit to the cost of an audit be established if they had to pay for it in addition to the franchise fees.

#### 2. Limitation on total number of permits issued.

The haulers requested that an upper limit be placed on the total number of permits issued and that any haulers that did not have a permit within that limit would need to appear before City Council to request a permit and demonstrate "need and necessity" for an additional hauler in Costa Mesa prior to any such permit being issued.

The haulers also requested that a portion of the revenue from the franchise fee be used for code enforcement actions to cite waste haulers operating in the City without a permit.

#### 3. Establishment of a minimum rate.

The waste haulers expressed an interest in establishing a minimum rate that would be charged to all customers receiving "bin service" in Costa Mesa by any waste hauler operating in the City. As explained by the haulers, with the imposition of a franchise fee, such a "bin service" rate is intended to allow the haulers to at least cover their costs of operation. The waste haulers said they would meet independently to come up with a "consensus" minimum "bin service" rate proposal for the City to consider.

#### 4. Length of Franchise.

The haulers requested that the franchise be granted for a ten-year period with a five-year automatic renewal or for a seven-year period with an "evergreen" clause. An "evergreen" clause would mean that the franchise would automatically renew absent any action to terminate the franchise by either party. As proposed in the Ordinance, staff has recommended a seven-year term with an "evergreen" clause.

Regardless of the length of the franchise ultimately included in the Ordinance, all haulers still acknowledged that the permit/franchise could be suspended or terminated by the City at any time for violating the terms of the ordinance and companion resolution.

#### 5. Franchise Fee.

The haulers requested that the franchise fee be based on actual cash receipts rather than gross sales. Further, some of the haulers indicated their desire to break out the fee on their billings to their customers as a separate line item.

#### 6. Establishment of a rebate mechanism for recycling over-and-above AB939 requirements.

The haulers expressed an interest in establishing a rebate mechanism that would reduce the amount of the franchise fee they would be required to pay as an incentive to recycle over-and-above the AB939 required diversion rate of 50%.

### **ALTERNATIVES**

City Council may direct staff to make specific changes or modifications to the draft ordinance at its discretion.

Council may choose to proceed with the second reading and adoption of the Ordinance as approved for first reading and direct staff to prepare the associated fee resolution.

Currently, the City does not levy a Solid Waste Hauling Franchise Fee. The proposed ordinance authorizing a Solid Waste Hauling Franchise Fee and approved for first reading at Council's October 4, 2004 Council meeting is attached.

### **FISCAL REVIEW**

The Solid Waste Hauling Franchise Fee will generate approximately \$1,500,000 to 2 million in new revenue to the City's General Fund based upon how the fee is ultimately structured.

### **CONCLUSION:**

At present, 31 of 34 cities in Orange County currently assess a Solid Waste Hauling Franchise Fee. The City is one of three cities in the County that does not assess a Solid Waste Hauling Franchise Fee.

The Solid Waste Hauling Franchise Fees may be enacted on either an exclusive or non-exclusive basis. A non-exclusive franchise fee is proposed. Such franchise fees allow the trash haulers to set their own rates without any controls by the City, thus preserving their free market system. Such franchise fees allow the trash haulers to set their own rates without any controls by the City, thus preserving their free market system. A non-exclusive franchise fee would also provide for a means of monitoring the waste hauler rates to determine, if in fact, waste hauler rates in Costa Mesa were indeed higher or lower than other communities with Solid Waste Hauling Franchise Fees.

Taking into account all of the preceding, staff suggests a course of action that will bring the subject revenues more into line with the rest of Orange County to the level needed to close the gap. Given improvements in the economy and the opportunity of the electorate in November 2004 to discontinue the practices of the State of California in terms of continually taking local revenues, the City should be able to meet normal operating expenditures with some modest room for growth.

Further, based upon recent discussions with waste haulers subsequent to the October 4, 2004, City Council meeting regarding the elements of the proposed Ordinance and fee resolution described above, staff concluded that material changes may need to be made in the proposed ordinance requiring that the proposed ordinance be re-noticed for first reading.

Therefore, Staff is recommending that Council continue consideration of adoption of a Solid Waste Hauling Franchise Fee to the City Council meeting of November 1, 2004 and direct staff to prepare a revised ordinance for first reading to amend Title 8 of the Costa Mesa Municipal Code by adding section 8-87 adopting a Solid Waste Hauling Franchise Fee.

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Marc R. Puckett  
Director of Finance

Attachment 1: [Proposed Solid Waste Hauling Franchise Fee Ordinance](#)

Attachment 2: [Sanitation Franchise Fee Survey](#)

Copy to: Department Directors