



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 1, 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 20, 2004

FROM: FINANCE DEPARTMENT/ADMINISTRATION

PRESENTATION BY: MARC R. PUCKETT, DIRECTOR OF FINANCE

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

RECOMMENDED ACTION:

It is respectfully recommended that City Council give first reading to the attached ordinance, which amends Title 8 of the 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.

At the October 18, 2004, City Council meeting, Council took no action on the second reading of the proposed Solid Waste Hauling Franchise Fee Ordinance and continued consideration of the Ordinance to the November 1, 2004, City Council meeting. Council also directed staff to prepare a revised Ordinance for a new first reading at that 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 purpose 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 enter into such franchise agreements 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.

This authority has been questioned by the Costa Mesa Sanitary District with respect to the City’s legal right to impose a franchise fee against the District’s exclusive curbside residential waste hauler, CR&R, Co. Based upon a review of this matter by General Counsel to the District and the City Attorney’s Office, the matter of jurisdictional authority to impose such a fee on the District’s waste hauler is unclear.

Overview: Of the 34 cities in Orange County, 31 have Solid Waste Hauling Franchise Fees. Costa Mesa is one of three cities in the county that do not levy a Solid Waste Hauling Franchise Fee. 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. 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, the waste 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.

Staff held additional meetings with the waste haulers to further discuss the proposed ordinance and other issues that may need to be incorporated into a proposed fee resolution. During these discussions, waste haulers had requested that staff consider certain changes to the proposed Ordinance.

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 had 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. The haulers had also requested that the franchise fee be based on gross receipts instead of gross sales. 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. 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.

As proposed, all haulers would be audited after the first year and then once every three years thereafter as necessary. Additionally, a definition of gross receipts will be incorporated into the proposed fee resolution when the Ordinance is adopted. Further, the haulers would need to make available at their offices all such records necessary to determine the franchisee's gross receipts and the accuracy of franchise fees paid. To the extent possible, the City would maintain any such records reviewed in confidence. The cost of such an audit would be borne by the City.

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. As an alternative to a limit on the number of permits, the haulers requested consideration of creating two classes of permits, one for "front-loader" waste haulers and one for "roll-off" waste haulers. Further, as part of the creation of classes of permit holders, the haulers requested that "roll-off" waste haulers be prohibited from hauling directly to a landfill so as to require "roll-off" waste haulers to comply with the same waste diversion requirements and costs incurred that "front-loader" waste haulers are required to adhere to. 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.

As proposed, two classes of franchises are created in the ordinance, a Class "A" and a Class "B" franchise. Holders of a Class "A" franchise would be able to use any and all types of licensed solid waste collection vehicles to service commercial, multi-family and industrial accounts within the City's waste disposal jurisdiction. Holders of a Class "B" franchise would only be able to operate roll-off vehicles to service commercial, industrial and temporary bin accounts. Further, holders of a Class "B" franchise would be prohibited from hauling any collected solid waste directly to a landfill.

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.

As proposed, Class “A” franchisees would pay a minimum franchise fee of \$10,000 and Class “B” franchisees would pay a minimum franchise fee of \$1,500.

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. Line-item franchise fee on billings.

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

Staff does not support breaking out the fee on waste hauler’s billings separately since the AB939 fee of \$.55 per ton is not broken out separately at the present time. Breaking out the franchise fee separately may cause waste haulers to directly pass on the franchise fee to customers compounded upon the AB939 fee.

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%.

Staff does not support this request at this time but may reconsider this request in the future as appropriate. Due to the complexity of this matter, a significant amount of study and staff time would need to be devoted to this matter to determine whether this request is feasible.

Further, staff held meetings with the Costa Mesa Sanitary District regarding the possible application of the Solid Waste Hauling Franchise Fee to its exclusive curbside residential waste hauler, CR&R. The CMSD expressed their opposition to the application of the franchise fee to its waste hauler. They requested that staff consider inclusion of certain changes in the proposed ordinance to exempt any revenue generated under the District’s exclusive contract with its waste hauler from application of the franchise fee.

Staff has reviewed this request and is recommending inclusion of the requested exemption in the proposed ordinance.

As a result of the discussions with the waste haulers and the CMSD regarding the proposed Ordinance, staff has included some changes in the proposed ordinance based on staff's efforts to be responsive to concerns expressed by the waste haulers and the District as appropriate and in the best interests of the City.

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 first reading and adoption of the Ordinance as submitted and direct staff to prepare the associated fee resolution.

Or, Council may choose to take no action on the proposed ordinance and receive and file the report.

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.

LEGAL REVIEW

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

CONCLUSION:

At present, 31 of 34 cities in Orange County 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 assist in closing the budgetary 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.

As a result of the discussions with the waste haulers and the CMSD regarding the proposed Ordinance, staff has included some changes in the proposed ordinance based on staff's efforts to

be responsive to concerns expressed by the waste haulers and the District as appropriate and in the best interests of the City.

Therefore, Staff is recommending that Council give first reading to the attached ordinance, which amends Title 8 of the Municipal Code by adding section 8-87 adopting a Solid Waste Hauling Franchise Fee.

Marc R. Puckett
Director of Finance

Tom Wood
Acting City Attorney

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

Attachment 2: [Red-lined Copy of Proposed Solid Waste Hauling Franchise Fee Ordinance](#)

Attachment 3: [Sanitation Franchise Fee Survey](#)

Copy to: Department Directors