

Office of the County Counsel

651 Pine Street, 9th Floor
Martinez, CA 94553

Contra Costa County

Phone: (925) 335-1800

Fax: (925) 646-1078

Date: February 23, 2016

To: Internal Operations Committee

From: Sharon L. Anderson, County Counsel
By: Linda Wilcox, Deputy County Counsel



Re: DRAFT SOLID WASTE COLLECTION AND TRANSPORTATION ORDINANCE

This memo summarizes the attached draft Solid Waste Collection and Transportation ordinance. The ordinance would revise Chapter 418-2 of the County Ordinance Code to establish new permit requirements for the collection and transportation of solid waste in the unincorporated area of the county. This memo also compares the attached draft with the draft ordinance that was presented to the Internal Operations Committee on October 12, 2015.

Permit requirement

Section 418-2.004 of the current draft ordinance establishes the basic permit requirement. Under the ordinance, no person shall collect solid waste from any location in the unincorporated area of the county and transport it over the public streets or highways unless the person does so under a valid permit or unless an exemption applies. "Solid waste" in the ordinance has the same meaning as "solid waste" in Public Resources Code section 40191:

"... all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge that is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes."

The draft ordinance that was presented to the Internal Operations Committee in October 2015 (the "2015 Draft Ordinance") included a definition of "refuse" that is not needed because it is included within the current draft's definition of solid waste. Other additional definitions in the 2015 Draft Ordinance are also not necessary and for that reason were omitted from the current draft ordinance.

Territorial limits; solid waste types

There are multiple solid waste collection franchise agreements in force in the unincorporated area of the county. Some are agreements with the county, and others involve

other public agencies. Under these agreements, companies have obtained exclusive rights to collect and remove specified types of solid waste in defined areas.

An ordinance authorizing the issuance of a permit to collect and transport all types of solid waste in the entire unincorporated area would likely conflict with one or more of these agreements. The purpose of section 418-2.006 of the current draft ordinance is to avoid conflicts by requiring permits to specify waste types and territories and prevent the issuance of permits that would conflict with another person's exclusive franchise rights.

Exemptions

Under section 418-2.008 of the current draft ordinance, the following activities do not require a permit:

- (a) The collection and transport of solid waste by the owner or occupant of the real property where the solid waste was generated.
- (b) The collection and transport of solid waste that is generated on real property in the course of a service provided to the owner or tenant of that property by a building contractor or landscape contractor, if the solid waste is collected and transported by the contractor.
- (c) The collection and transport of solid waste under a valid federal, state or other local agency permit.
- (d) The collection and transport of solid waste under a valid franchise agreement.
- (e) The collection and transport of solid waste that is generated in a mechanized manufacturing process or at a publicly operated treatment works.
- (f) The collection and transport of source-separated recyclable material.

These exemptions are similar to the exemptions in section 418-2.004 of the 2015 Draft Ordinance.

Permit applications

Section 418-2.010 of the current draft ordinance lays out the process for applying for a permit. An application requires eight categories of information to be provided by the applicant, on a form provided by the County. This section also describes the process for reviewing that application. The 2015 Draft Ordinance required less information from applicants.

Vehicle inspections

Section 418-2.012 of the current draft ordinance authorizes the health officer to inspect vehicles before a permit is issued. A vehicle must be designed to safely handle and securely contain solid waste, and must be marked with the applicant's name and telephone number. This section is similar to section 418-2.003(e) of the 2015 Draft Ordinance.

Permit issuance; grounds for denial

Under section 418-2.014 of the current draft ordinance, a permit will be issued unless there is a specific reason to deny the permit. Among other reasons, a permit may be denied if another person has an exclusive right to collect and haul the same type of waste that the permit applicant proposes to collect and transport, in the same territory described in the application. The 2015 Draft Ordinance did not state express grounds for denying a permit.

Conditions

Section 418-2.016 of the current draft ordinance lists conditions of operation under a permit. One condition requires solid waste to be taken only to a lawfully operated solid waste facility or to a lawfully operated recycling facility that receives previously separated wastes¹. This condition is similar to section 418-2.008(f) of the 2015 Draft Ordinance, but does not call out landfills and transfer stations because they are solid waste facilities.² The term "solid waste facilities" is defined in section 418-2.002 of the current draft ordinance.

The current draft ordinance does not include requirements that largely duplicate provisions contained in title 14 of the California Code of Regulations, such as the marking of containers and equipment construction standards.³ Those provisions are enforceable by Contra Costa Environmental Health in its capacity as the solid waste local enforcement agency.

Section 418-2.016 of the current draft ordinance contains a new condition that would require a permittee to keep a copy of the permit in each vehicle and produce it in response to a demand of the health or a peace officer. This condition may aid in enforcement of the ordinance.

¹ A recycling center that separates recyclables out of mixed loads would be considered a solid waste facility. (Pub. Resources Code, §§ 40172, 40194, 40200, subd. (a).)

² See Pub. Resources Code, § 40194.

³ See Cal. Code Regs., tit. 14, §§ 17316 & 17341.

Bond

Section 418-2.018 of the current draft ordinance requires a performance bond and authorizes the amount to be set by the board by resolution. Amendment of this amount could be accomplished by another resolution. The 2015 Draft Ordinance set a dollar amount of a bond.

Permit revocation

Under section 418-2.022 of the current draft, a permit may be revoked if a permittee does not comply with a permit condition or the permittee's conduct is a nuisance. The 2015 Draft Ordinance does not say when a permit may be revoked or provide a process for disputing a revocation.

Prohibition

Section 418-2.024 of the current draft ordinance prohibits the hiring of a person to collect solid waste and transport it over public streets and highways unless that person has obtained a permit or is exempt from the permit requirement. This prohibition is different from proposed section 418-2.005 of the 2015 Draft Ordinance, which prohibited a person from engaging the services of such a person whether or not for compensation. The reason for the distinction is that Vehicle Code section 21100, subdivision (b), authorizes the adoption of an ordinance licensing and regulating the operation of vehicles for hire, but not the operation of vehicles that are not for hire.

Investigations

Section 418-2.026 of the current draft ordinance provides the health officer with inspection authority. This is similar to the inspection authority in the 2015 Draft Ordinance.

Construction

Section 418-2.028 of the current draft ordinance says that the chapter is not to be construed in a manner that conflicts with Vehicle Code section 21100, subdivision (b). This provision, which is not in the 2015 Draft Ordinance, means that the permit requirement in the current draft ordinance does not apply to persons who collect and transport waste for no compensation.

Enforcement

The current draft ordinance can be enforced by Contra Costa Environmental Health and the Contra Costa County Sheriff's Office under existing ordinances and statutes. County Ordinance Code section 14-8.008(a)(1) authorizes the health services director to issue citations to persons who violate Chapter 418-2. Existing statutes would give the sheriff and his deputies

the authority to issue citations under this ordinance, since a violation would be an infraction punishable by a fine.⁴

LW/

cc: David J. Twa, County Administrator
John Kopchik, Conservation and Development Director
Marilyn C. Underwood, Environmental Health Director

H:\Ordinances\IOCommittee.re.WasteHaulerOrd.2.23.16.wpd

⁴ Gov. Code, § 24000, subdivision (b), 24101, 26601; Pen. Code, §§ 15, 16; County Ord. Code, §§ 14-8.002 & 14-8.004(a)(1).