

JOINT STAFF REPORT TO THE INTERNAL OPERATIONS COMMITTEE

Contra Costa Environmental Health and Department of Conservation & Development

February 29, 2016

I. INTRODUCTION

To prepare for bringing this matter back before the Internal Operations Committee (IOC), a fair amount of staff time and internal discussions have been dedicated to the issues discussed in this report. Over the past several months, a multi-departmental staff team has diligently gathered information, collaboratively worked through issues and several draft versions of the ordinance which collectively shaped the revised version of Chapter 418-2 now being presented. Below is a brief overview of this collaborative staff effort:

Multi-departmental staff team includes the Directors and lead staff members from CCEH and DCD as well as staff contacts from County Counsel's Office and the County Administrator's Office (CAO). The entire team met three times, once in November, again in December and then again in February. Additionally, key staff members from DCD, CCEH and County Counsel's office have had numerous phone meetings more frequently during the same several month period in order to discuss and identify means to address specific issues in much greater detail so that County Counsel's office could finalize the revised Chapter 418-2 being presented to the IOC. Since the October 2015 IOC meeting, staff from DCD and CCEH have been in communication with County franchise representatives on several occasions to discuss the proposed ordinance or related franchise issues.

II. POLICY ISSUE FRAMEWORK TO FACILITATE MOVING FORWARD AND FORMULATION OF RECOMMENDATIONS

A. **Distinction Between Ordinance and Related Issues** – During the course of the IOC's consideration of the potential ordinance revisions to Chapter 418-2 referred by the Board of Supervisors in 2012, other policy issues have been raised which are related to, but extend beyond the scope of the ordinance. Now that the IOC is being presented with the recommended Chapter 418-2 language, it is possible to clearly identify those issues which are not expected to be addressed in ordinance. Staff has identified these non-ordinance policy issues in this report in order to potentially facilitate discussion of distinct recommendations the IOC may decide to make to the Board of Supervisors regarding the referred ordinance versus the other related issues. Staff has grouped these related non-ordinance policy issues into two categories, Franchises and Enforcement.

1. **Policy Issues are Inter-related** – Although technically beyond the scope of what ordinance revisions would address, these other non-ordinance policy issues are inter-related to varying degrees. The inter-relationships significantly add to the

complexity of the potential problems and solutions. Furthermore, the manner and sequence in which each issue is ultimately addressed can dictate and limit options to address other policy issues.

2. **Proposed Approach for Moving Forward** – Although it is possible (and probably helpful) to take some actions that help move forward with addressing non-ordinance policy issues on a ‘parallel track’ if desired by the Board, there are others which cannot because they are contingent upon factors that dictate the applicable sequence and timing. Non-ordinance policy issues are grouped and further discussed below in sections pertaining to Franchises and Enforcement. Additionally, to the extent that staff has identified factors that dictate sequence/timing specific to an issue/action such has been noted in the applicable section.
3. **Separating Issues and Taking Next Steps** – Staff recommends that, to the extent possible, immediate action on the ordinance and further action on the related policy issues be pursued on separate, parallel tracks in order to simplify, and clarify, discussion of the issues. For the IOC’s consideration, staff is providing the following list of potential next steps to move forward on these policy issues in the near term. Most of these next steps are discussed in more detail in subsequent sections of this staff report as are additional potential actions that the County may consider in the future (medium and far term).
 - a. Ordinance – Potential Future Actions:
 - i. Consider recommending that the Board approve the revised version of Chapter 418-2 attached as Exhibit A, which requires that the bond amount be specified in a fee resolution to be adopted by the Board, and specify whether the ordinance effective date should be timed to coincide with the Board’s consideration of the fee resolution and/or the minor County franchise amendments described in Section IV.A.4.a.
 - ii. If the revised Chapter 418-2 ordinance is approved by the Board of Supervisors, CCEH will perform the following activities:
 - o Develop application form in consultation with DCD.
 - o Develop a fee schedule for refuse haulers.
 - o Notify refuse haulers, Chambers of Commerce, local building and code enforcement departments, etc. of the new ordinance.
 - o Process permit applications (including notifying the special districts and DCD of applications).
 - o Inspect and issue permit stickers to compliant vehicles.
 - o Investigate any reports of violations.
 - o Conduct field surveillance, including at illegal transfer stations.
 - b. Franchising/Franchises – Potential Future Actions:
 - i. When transmitting recommended Ordinance to the Board, identify separate recommendation about possibly amending three of the County’s franchises to clarify Industrial Waste definition in three franchises and add

wording clarifying the applicability of the exclusivity exception for property clean-up service providers. (see Section IV.A.4 of this report)

- ii. Consider recommending that the Board direct to staff to proceed with issuance of 5-Year Rule notices required for the County to have the option to potentially amend franchises to expand exclusivity in the future. (see Section IV.A.7.iii of this report)

c. Enforcement – Potential Future Actions:

- iii. Consider requesting that County franchise haulers reach out to law enforcement agencies in each Contra Costa city they currently serve to help raise awareness and discuss potential enforcement of Public Resources Code Sections 41950, 41951 and 41955 pertaining to the theft of residential and commercial recyclables prior to collection (described in described in Section IV.B.4.a.ii.A.

III. REVISED ORDINANCE: CHAPTER 418-2

The proposed ordinance (attached as Exhibit A) has been revised significantly over the past several months. The attached Memorandum from County Counsel's office (attached as Exhibit B) identifies what changes have been made to the Draft Ordinance version presented to the IO Committee in October 2015 as well as a brief explanation of the reason for each change. The proposed ordinance would, in the view of staff, constitute a marked improvement over current regulation of Chapter 418-2 of the County Ordinance. It is however important to understand the challenges that will be faced in implementing the ordinance.

A. **Enforceability**

There are issues related to potentially overlapping regulatory authority that may significantly impact the implementation of a revised refuse hauler ordinance. Specifically, potential conflicts with ordinances adopted by other local non-County franchise agencies (discussed in Section III.B below) or their respective franchise agreements (discussed in Section IV.A.2). The interrelated complexities associated with implementing a waste hauler permit system in areas where waste collection is already governed by multiple different local agencies pursuant to separate franchise agreements granting varying degrees of exclusivity are expected to pose significant enforceability challenges. Staff may discover that there are other local agency adopted ordinances governing certain waste hauling activities that will introduce further unforeseen implementation and/or enforcement complexities.

Existing franchise agreements involve variables that do not allow for any permitting uniformity and increase the complexity of permit systems design which directly compromise the ordinance's enforceability. This lack of permitting uniformity that is necessitated by existing franchises, diminish the usefulness and effectiveness of the County issued decals as simple stand-alone compliance indicators. Although the lack of a decal is a visually obvious clue that hauler does not have a permit, it does not mean that the unpermitted hauling activity constitutes a violation of the ordinance.

There are numerous types of unpermitted hauling activities that would not violate Chapter 418-2, such as a roofer hauling old roofing materials from his own jobsite or a non-profit organization transporting donated source-separated recyclables (both of which are exempt from the ordinance) or an independent hauler with a load of household refuse picked up from within a city (not subject to the ordinance). Permits will authorize hauling of only certain waste types from customers located within a defined permit-specific territory – which may be further limited by customer type (e.g. only residences). The readily visible decal makes it relatively easy to spot permitted hauling vehicles, which only proves that permitted hauler has authority to haul at least one type of waste from somewhere in the unincorporated area.

It is expected that law enforcement could not play a significant role because they would generally not have the probable cause necessary to stop haulers solely because they do not have decal. Most likely complaints will be the primary way that CCEH will become aware of haulers that may be providing waste collection that violates their permit. In most cases, further investigation or follow-up by CCEH will be necessary to determine if the hauler is in compliance with the ordinance. However, though these obstacles exist, the ordinance will provide a basis for taking enforcement actions that prevent harmful activities, such as illegal dumping.

B. Other Local Agencies with Authority to Regulate Waste Collection

To date, the local agency ordinances received and reviewed by staff do not appear to pre-empt or limit ordinance implementation. An ordinance adopted by the Central Contra Costa Solid Waste Authority (CCCSWA) established their existing permit system applicable to construction and demolition (C&D) debris transporters operating within that Central County territory. The boundaries of the CCCSWA include five incorporated city areas as well as surrounding unincorporated areas. The four other district managed franchises include only unincorporated areas of the County as shown in the Map attached as Exhibit C. Staff is not aware of any other hauler permit systems being implemented in the unincorporated areas.

Locally adopted ordinances pertaining to waste collection that are in effect for non-County franchise areas, could possibly limit the effectiveness of Chapter 418-2 as proposed to be revised or maybe even pre-empt the County's authority to implement the revised ordinance altogether. The proposed ordinance acknowledges that other local agencies exercise their own regulatory authority over waste collection within their jurisdiction which will ideally be adequate to avoid any conflicts with ordinances adopted by those local agencies. CCEH has reached out to these non-County franchise agencies seeking information about any applicable ordinances that they may have adopted. CCEH staff has identified two local franchise agencies which have adopted ordinances related to waste hauling (CCCSWA and Mt. View Sanitary District) and confirmed that a third agency has not adopted any such ordinances (Kensington Police Protection and Community Services District). Unfortunately, at the time this staff report was prepared, the remaining two local agencies had yet to respond (Rodeo Sanitary District and Byron Sanitary District).

Upon receipt of any additional non-County ordinances pertaining to waste hauling, staff may find that there is critical regulatory conflict necessitating that the County work more closely with the applicable non-County franchise agency(ies) in order for the County to exercise any regulatory authority over waste collection within their jurisdictional franchise areas. If this occurred, CCEH staff would strive to identify and overcome any barriers in order to obtain the agency's consent to implement the ordinance as written within their jurisdiction. If issues related to overlapping regulatory authority were to result in substantially limiting or restricting implementation of Chapter 418-2 in one or more non-County franchise areas, The Board of Supervisors may wish to further revise Chapter 418-2 to include only those requirements which can be implemented more uniformly and effectively enforced on a consistent basis.

IV. NON-ORDINANCE POLICY ISSUES

- A. **Franchise Agreements** - There are nine separate Franchise Agreements which govern the collection of waste and recyclables, each covering different portions of the unincorporated County area. Four of the nine Franchises are administered by the County (County Franchises) and the other five are each administered by other local public agencies (Non-County Franchises). See map attached as Exhibit C for delineation of the County's four franchise areas as well as the five non-County franchise areas.
1. **County Franchises** govern collection services provided to approximately 53% of the total unincorporated population. Following is a breakdown for the four County Franchises:
 - Allied Waste Systems, Inc. (Allied) primarily serves Central County customers (approximately 9% of the total unincorporated County population)
 - Crockett Garbage Service serves Crockett, Port Costa and Tormey (approximately 2% of the total unincorporated County population)
 - Garaventa Enterprises primarily serves East County customers (approximately 20% of the total unincorporated County population)
 - Richmond Sanitary Service (RSS) primarily serves West County customers (approximately 21% of the total unincorporated County population)
 2. **Non-County Franchises** administered by the following five local public agencies govern services provided to approximately 47% of the total unincorporated population:
 - Central Contra Costa Solid Waste Authority/RecycleSmart – Joint Powers Authority responsible for waste and recycling programs for Alamo, Blackhawk, Contra Costa Centre, Diablo, Tassajara and unincorporated areas in the vicinity of Danville, Lafayette, Moraga, Orinda and Walnut Creek.

- Byron Sanitary District– Special District solely responsible for a portion of Byron
 - Kensington Police Protection and Community Services District – Special District solely responsible for collection services in Kensington
 - Mt. View Sanitary District – Special District responsible for unincorporated Martinez areas as well as some land near Pacheco Blvd. and Arnold Dr.
 - Rodeo Sanitary District– Special District solely responsible for collection services in Rodeo
3. ***Interrelationship between Franchises and Ordinance/Permit System***
Collection of waste and recyclables is currently regulated almost exclusively by franchises administered by local agencies. There are a number of franchise-specific variables which are interrelated with key ordinance provisions in Chapter 418-2. These interrelationships and the need to avoid potential permit/franchise conflicts add a fair amount of complexity the overall permit system. Understanding the complexities involved with these interrelated variables can also help provide insight as to the overall approach to Chapter 418-2. Franchise exclusivity can be complicated because it depends on the franchise and at least two if not more variables. The franchise exclusivity variables include geographic area (which franchise area), the type of waste generator (such as residence), the type of waste (such as yard waste or construction and demolition waste), the type of business arrangement (free pick-up or fee for service) as well as any related services (clippings resulting from gardening).
4. ***Actions Related to Franchises to aid Ordinance Implementation***
Following is a discussion of related non-ordinance policy issues associated with the franchise agreements:
- a. **Avoid issuing permits that conflict with County Franchises**
- i. Minor clarification type amendments to three of the County's Franchise Agreements [Separate/Parallel Track]
Industrial Waste – The recommended revisions to Chapter 418-2 does not define Industrial Waste. However, it is in effect defined by the wording of the applicable proposed Exception in Section 418-2.008(e) which says "solid waste that is generated in a mechanized manufacturing process or at a publicly operated treatment works". Only one of the County's four franchises (RSS) includes "publicly operated treatment works" in its Industrial Waste definition, therefore it may be worthwhile to amend the County's other three franchises to add publicly operated treatment works to their definitions.
 - ii. Minor clarification type amendments to all four of the County's Franchise Agreements [Separate/Parallel Track]
On-site Clean-up / Junk Removal Services – Consistent with earlier discussions, amending the exclusivity exception applicable to remodeling

and gardening in the County's franchises will help facilitate consistent regulation of hauling by on-site clean-up (junk removal) services under the new permit system that would be implemented following the adoption of revisions to Chapter 418-2. The Franchise Agreements will also need to clarify that hauling performed in conjunction with other clean-up services (intended to be subject to the permit requirement in Chapter 418-2) fall under the franchise exclusivity exception applicable to contractors and landscapers as long as any collection and transport by on-site clean-up service providers is solely for solid waste they were hired to physically remove, load, transport and reuse, recycle or dispose.

- iii. Referral Process for County Franchises: *[Ordinance Implementation]*
CCEH proposes to implement an application referral process to facilitate coordination with County and Non-County Franchising Agencies (discussed in greater detail in the following section). DCD will act as the recipient agency for referrals pertaining to the four County Franchises for the purpose of reviewing Hauler Permit Application referrals in order to provide CCEH with determination about any applicable conflicts with County Franchises.

b. Avoid issuing permits that conflict with Non-County Franchises

- i. Recommended Ordinance Language: County staff provided substantial comments on the revised Hauler Ordinance with the intent of trying to ensure that Permits would not be issued if the proposed hauling services would conflict with exclusive rights granted to a Franchise Hauler.
- ii. Permit System Design: County staff also expects to rely quite heavily on the design of the permit system that would be implemented if the revised Hauler Ordinance is adopted to further facilitate consistency with existing Franchise Agreements administered by the County or five other local agencies (JPA and Special Districts) to govern the collection of waste and recyclables throughout the unincorporated County.
 - I. **Franchise Agency Referral Process** – CCEH will implement a referral process to facilitate coordination with Franchising Agencies for the purpose of avoiding issuance of permits which conflict with their respective franchises. Currently there is no comprehensive centralized map delineating the exact boundaries of each of the nine unincorporated area Franchise Service Areas (Exhibit C of this report is a general map of these Service Areas). For the sake of efficiency and thoroughness, CCEH plans on referring copies of each application to all six Franchising Agencies (including DCD for all four County Franchises as mentioned above). Eventually, staff's ultimate goal would be to develop a Geographical Information System (GIS) electronic mapping layer that precisely depicts each of the Franchise Service Areas.
 - II. **Permit Applications** - CCEH and DCD will work together on developing the application forms to help ensure that applicants are

required to provide the type of information needed to make determinations regarding potential conflicts with the County's Franchises. The complexity of the Franchise related variables involved necessitate that the Permit Applications will require applicants to provide a significant level of detail about the hauling services for which they are seeking a permit.

- A. Application forms will require the applicant to clearly identify the exact boundaries of the **territory** they are seeking approval to serve and the type of **waste generator (location)** they propose to collect from (e.g. residential, commercial, light industrial, heavy industrial, or governmental).
- B. Applications will also need to identify what **waste types** they would like to collect (if not the same for all generator types, they will have to specify waste types by generator type). C&D debris/material will distinguished as one of the waste types.
- C. Applications will need to identify which types of solid waste are to be **collected in conjunction with on-site clean-up services** (which might involve any type of solid waste) separately from the types of solid waste that could/would be hauled solely as a collection service (meaning customers would be removing waste from their property and loading the containers themselves). The intent being that Permits issued for waste types which the County's Franchisees have been granted the exclusive right to collect would only authorize collection and transport by on-site clean-up service providers and solely for waste they were hired to physically remove, load, transport and dispose/recycle.

III. **Franchise Agency Determinations** - Upon receipt of a new application, CCEH will refer a copy of the application package to the six Franchising Agencies and request they provide a determination about any proposed hauling services which conflict with their Franchise within a specified 30-day review period. If no response is received after the 30-day review period, CCEH will proceed with the permitting under the presumption that it would not violate their franchise.

5. ***Amending Franchises to Possibly Expand Exclusivity in the Future (Separate from Ordinance Implementation)***

County franchise hauler representatives (stakeholders) initially raised this issue at the IOC meeting held in April 2015. These stake holders advocated for amending three of the four County franchises to provide franchisees with the exclusive privilege to collect C&D debris, similar to what is provided for in the County's Franchise Agreement with RSS. This issue was brought up in workshops that CCEH hosted for stake holders in May 2015 to discuss revising the ordinance as well as being discussed at the July 2015 and October 2015 IOC meetings.

However, exclusivity privileges in franchise agreements are a stand-alone issue, different from revising the ordinance and as such warrants its own separate process.

Since this exclusivity issue was not part of the Board's referral to the IOC, DCD staff has identified the need to obtain direction from the Board of Supervisors prior to moving forward. Although franchise exclusivity was raised as a potential ordinance issue, it is significant policy issue extending beyond the scope of the referral with implications unrelated to illegal dumping. The IOC and County staff have appropriately been focused on ordinance-specific issues. Therefore, this important matter has yet to be afforded the attention it deserves. Conceptual support for this idea has been expressed by members of the IOC at their July and October meeting, however that was in the absence of receiving or reviewing any analysis or recommendations from staff. Staff is providing some additional details regarding this policy issue in this report to facilitate more detailed discussion or referral to the Board of Supervisors, if so desired.

- Chapter 418-7: County Code Chapter 418.7 entitled "Franchises for Solid Waste Collection, Disposal and/or Recycling Service" is the ordinance applicable to County franchises. Franchises are not governed by Chapter 418-2. As such, in order to expand this exclusivity, staff proposes this issue be delineated from the proposed Hauler Ordinance and addressed separately through its own process.
- Assessing the Relative Merits of Franchise Exclusivity as Compared to Alternative Regulatory Approaches (C&D): Waste collection activities are primarily regulated at the local government level via permits or franchise agreements. Permits and franchises can be either exclusive or non-exclusive. Some agencies limit the number of permits that can be issued or franchises that can be in effect, others impose more extensive permit conditions (including diversion requirements) or impose on-going fee (somewhat like a franchise fee). Each of these approaches has their upsides and their downsides, so which is the best can be quite subjective as it depends upon the circumstances and the goals/needs of the agency involved.

Staff recommends the Board of Supervisors consider the advantages and disadvantages of various approaches as it provides direction to staff on potentially negotiating amendments to existing franchises. As explained previously, only the RSS Franchise provides exclusivity for hauling C&D debris. This difference was not an unintentional oversight but instead it was the policy decision made at the time. It is also worth noting that one major difference the RSS Franchise has from the County's other three franchise agreements is that it was drafted and approved roughly two to three years prior to the others. County staff learned from this initial franchise negotiation and later implementation of the RSS Franchise, the valuable experience and ability to adapt and improve future franchise agreements. One valuable difference was ensuring that the scope of the exclusivity provision would more closely adhere to the franchise requirement in County

Code Chapter 418-7 "Franchises for Solid Waste Collection, Disposal and/or Recycling Service". See Table 1 below for a comparison of potential benefits of various collection system options which is part of a report that was prepared in 2012 by a consultant hired by the County (complete report available upon request). Staff has identified some information gathering tasks in Section IV.A.7 that should yield additional updated data that should help supplement the consultant's findings in their report.

Table 1. COMPARISON OF POTENTIAL BENEFITS OF COLLECTION SYSTEM OPTIONS

Collection System Options	Ability to Generate Additional Fees	Additional AB 939 Diversion Opportunities	Impact on Illegal Dumping ⁽¹⁾	Potential Impact to Rate Payers	Ease of Administration
Open-Market Options					
Traditional Open-Market Options					
<div>Unregulated Open-Market System</div> <div>(EXISTING – 2015)</div>	<div>None</div> <div>D</div>	<div>None</div> <div>D</div>	<div>May increase relative to other options if unregulated "fringe haulers" illegally dump collected materials</div> <div>D</div>	<div>Potential for lowest rates for some haulers</div> <div>A</div>	<div>None</div> <div>A</div>
<div>Regulated Open-Market Permit System With Limited Permit Requirements</div> <div>(PROPOSED ORDINANCE)</div>	<div>Can require basic permit fees (e.g., set amount and/or fee per truck)</div> <div>B</div>	<div>Can require material be diverted but difficult to enforce</div> <div>B</div>	<div>May be reduced relative to Unregulated Open-Market System as a result of greater regulatory oversight.</div> <div>B</div>	<div>Potential for lower rates relative to Closed-Market Options</div> <div>B</div>	<div>Low</div> <div>B</div>
Enhanced Regulated Open-Market Options					
<div>Regulated Open-Market Permit System with Enhanced Permit Requirements</div>	<div>Can establish and collect permit fees (based on tonnage, gross revenues or other factors)</div> <div>A</div>	<div>Can require minimum diversion levels or that material be delivered to certified facilities</div> <div>A</div>	<div>May be reduced relative to Unregulated Open-Market System as a result of greater regulatory oversight</div> <div>B</div>	<div>Rates likely to be relatively higher than Open-Market Options due to Permit requirements</div> <div>C</div>	<div>Highest</div> <div>D</div>
<div>Regulated Open-Market Non-Exclusive Franchise with No Limit on the Number of Franchised Haulers</div>	<div>Can establish and collect franchise fees (based on tonnage, gross revenues or other factors)</div> <div>A</div>				
Closed-Market Options					
<div>Closed-Market with a Limited Number of Non-Exclusive Franchised Haulers</div>	<div>Can establish and collect franchise fees</div> <div>A</div>	<div>Can require minimum diversion levels or that material be delivered to certified facilities</div> <div>A</div>	<div>May be reduced relative to Open-Market Options due to stricter operating requirements that may eliminate "fringe haulers"</div> <div>B</div>	<div>Rates likely to be relatively higher than Open-Market Options due to Franchise requirements</div> <div>C</div>	<div>Highest</div> <div>D</div>
<div>Closed-Market with a Single Exclusive Hauler</div> <div>(EXCLUSIVE FRANCHISE)</div>				<div>Rates may be somewhat higher than Non-Exclusive Franchise due to lack of market pressures; but less so if competitively bid.</div> <div>C</div>	<div>High</div> <div>C</div>

⁽¹⁾ Greater regulatory control would be expected to reduce any illegal dumping by certain "fringe haulers" assuming they no longer operated, but any associated increase in rates may result in increased illegal dumping by waste generators.

Legend	
Most Preferable Option	A
More Favorable	B
Less Favorable	C
Least Preferable Option	D

SOURCE: 2012 Consultant Report

6. ***Process Required to Expand Franchise Exclusivity***

There is a mandatory noticing period and process that must be completed in order to authorize the County to proceed with any franchise amendments which would grant any new or expanded exclusive waste collection privileges. Section 49520 of the California Public Resources Code (PRC), states in part, "If a local agency has authority, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services¹ and those services have been *lawfully provided* for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction...". This requirement is often referred to as the "5-Year Rule" and the details are discussed briefly below.

- a. **5-Year Rule** – It is County staff's position that the 5-Year Rule applies to this issue of amending Franchise Agreements to expand exclusivity to haul C&D material. If the County wants to implement an exclusive franchise system, or a non-exclusive franchise system that limits the number of haulers through permits (i.e. an "approved list"), it must issue the required notices to those haulers that have lawfully been providing service for more than three years and then wait five years before implementing said change. Any solid waste enterprise "lawfully providing" service means that waste hauler is in substantial compliance with the terms and conditions of its franchise, contract, license, or permit. The PRC also defines a solid waste "License" as a license issued by a local agency or a business license issued by a local agency if the local agency has not established any other form of authorization for the lawful provision of solid waste handling services.

Technically, only certain hauling services are subject to the permit requirements of County Chapter 418-2 or the franchise/contract requirements in Chapter 418-7. Companies that haul C&D material are not obligated to obtain a franchise or permit pursuant to County Code Chapter 418-7. The County does not actually issue permits under Chapter 418-2 (existing Hauler Ordinance) nor has the requirements of that Chapter been actively enforced by the County since Chapter 418-7 was enacted. Therefore, any waste hauler who has a business license may be operating lawfully.

- b. **3-Year History of Business Licenses for Noticing** – DCD staff has obtained listings of all unincorporated area business licenses issued in the past three years from the County Tax Collectors Office. The average number of business licenses issued annually in the past three years is about 3,800 per year with a total of 11,500 licenses. Staff compiled the three years of data into one master list to facilitate more efficient analysis and data scrubbing (consolidate applicable records and purge non-applicable license data) for the purpose of deriving a more manageable list of enterprises for 5-year noticing purposes.

¹ The PRC defines Solid waste as "...all putrescible and nonputrescible solid and semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, *demolition and construction wastes*, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid waste."

Only business that have had valid business licenses for the entire 3 year period need be included, however the list can be further reduced by removing businesses known not provide waste hauling services, such as banks or retail stores. At the time this staff report was prepared, this data scrubbing effort was underway but a fair amount of work was still needed to eliminate more of the non-applicable businesses from the consolidated master list. Staff will continue working on this in anticipation that the IOC and Board may wish to proceed with issuance of 5-year notice to maximize the County's decision making flexibility for the future.

- c. **Starting the clock** – In order to initiate the start of the 5-year Rule clock, notices must be mailed to those businesses that have been lawfully providing waste hauling services for at least three years. The IOC may wish to recommend to the Board that they direct staff to move forward with the 5-year notices. There is no significant risk for doing so as it would not obligate the County to take any specific action in the future. However, it would provide the County with added flexibility in the future and the intervening period can be used to gather additional information as well as further study potential benefits and consequences of various approaches to amending the County's Franchise Agreements to expand exclusivity. Upon providing such notice, PRC § 49521 specifies that businesses providing "continuation" solid waste handling services during the 5-year period are subject to two conditions involving (1) meeting the quality and frequency of services required by the local agency in other areas not served by said business, and (2) if required by the local agency, adhere to rates that are comparable to those established by the local agency.

7. ***Additional suggested considerations to inform future decision making about expanding exclusivity***

Even if the County was prepared to move forward with amending these franchises to expand exclusivity, we are legally precluded from enacting such amendments during the 5-Year period following issuance of the required notice. However, the County would regulate the collection of C&D through a permit system if the Board approves the proposed revisions to Chapter 418-2 of the County Ordinance.

Staff suggests there is a need for additional information gathering and analysis which should be undertaken during the 5-Year Notice period to aid the County in in any franchise exclusivity expansion decision making process and/or negotiations. Additionally, during that period additional information may become available such as the below which should also be considered:

- New or changed laws and industry norms/trends closer to when the exclusivity could actually take effect.
- Evaluate the degree to which the implementation of the Hauler Permit system is effective means of regulating collection of this specialized waste stream.

B. **Enforcement:** The IOC expressed the preference to address enforcement aspects of the ordinance on a separate and parallel track and directed staff to gather information from law enforcement countywide to see if enforcement costs could be estimated.

1. **Funding** – Funding source(s) needs to be identified in order for the County to dedicate anything beyond the current level of resources to the types of enforcement discussed at prior IOC meetings.

a. Commitments from Franchisees: The IOC asked for a commitment from the County Franchisees to contribute amounts sufficient to fund enforcement of the ordinance countywide. A representative from the County's franchise hauler that serves most of East County has offered to fund one-third of a Community Services Officer (CSO). Of the total estimated revenue that franchise haulers collect annually from the ratepayers in all four of the County's Franchise Areas, this East County area accounts for roughly 45%.

b. Funding Enforcement by Raising Garbage Rates: The IOC asked staff to report back about the feasibility of raising garbage rates to help fund enforcement. Staff consulted with County Counsel's Office and was advised that the County cannot legal raise garbage rates to fund the desired enforcement.

2. **State Regulations/Laws Prohibit Unmarked Debris Boxes (CCR 17301-17345)**

As the Local Enforcement Agency (LEA) for solid waste, Contra Costa Environmental Health can enforce the State solid waste standards, including those provisions in Title 14 of the California Code of Regulations (CCR) throughout the unincorporated County area. Unlike the County's authority to regulate waste collection under Chapter 418-2, any ordinances pertaining to waste collection adopted by local non-County franchise agencies cannot preempt the LEA's authority to enforce the state's requirements in CCR Title 14. CCEH staff is not proposing to include requirements in Chapter 418-2 if there is already something similar in State laws or regulations that are already within the enforcement purview of a County department. There are a number of requirements and standards applicable to refuse hauling vehicles and containers contained in CCR Sections 17301-17345 (with the exception a permit requirement). Several CCR Sections already address two concerns that the County's franchise haulers have advocated that the County take on by expanding the scope of this ordinance, namely unmarked debris boxes and unmarked refuse hauling vehicles.

CCR Section 17316 requires containers of one cubic yard or more to be identified with the name and telephone number of the applicable service provider (container owner). CCEH has begun an information outreach effort to inform refuse haulers, contractors and building departments for the County and 18 cities (CCEH is not the LEA for the City of Pittsburg) of these requirements and advise that they can refer complaints about possible violations (unmarked

boxes/containers) to the LEA for investigation. If a violation is verified, the LEA will give official notice requiring the responsible party to correct the violation. CCEH believes that proactive enforcement of CCR Title 14 container marking requirements can adequately address franchise hauler concerns about unmarked debris boxes. If such efforts prove to be unsuccessful, the Board of Supervisors may wish to consider adding debris box (container) marking or decal requirements to Chapter 418-2.

3. **Building Inspection** – DCD’s Application and Permit Center staff will assist efforts by helping collect and make available (upon request) hauler information that is collected during the Building Permit process. The hauler information collected on these forms may also prove to be helpful to CCEH when they investigate complaints or allegations. Building Inspection staff will also help watch out for and report any debris boxes they observed which do not identify the name and telephone number of the container owner.
 - a. CalGreen: DCD is prepared to move forward with modifying our CalGreen Debris Recovery Plan and Report forms to require identification of the name of the person or company responsible for hauling debris from the applicable jobsite.
 - i. The State Building Code (including CalGreen) is updated every three years. Following the release of each updated State Building Code in approximately June or July, the County prepares any proposed local amendments to present in conjunction with the updated State Code for potential adoption by the Board of Supervisors between July – December.
 - ii. Later this year, the County will have the opportunity to develop proposed amendments to the updated version of CalGreen which will be presented for recommended adoption before the end of December 2016. Staff can include any recommended changes that may be deemed necessary to start requiring identification of the responsible hauling entity on CalGreen compliance forms.
 - b. Penalty for Violating CalGreen: At the October 12, 2015 IOC meeting, a Franchisee representative spoke in support of having the County start levying fines if Permittees failed to provide evidence of proper disposal of C&D debris at the time they requested their certificate of occupancy (Final Inspection) from the Building Inspection Division. The County does not have authority to impose fines on persons violating the debris recovery requirements in CalGreen. Persons found to be out of compliance with CalGreen debris recovery requirements are denied the ability to receive their Final Inspection for that project.

Cities have the ability to require deposits at the time building permit applications are submitted, which are only released after construction has been completed and the report and receipt documentation is submitted demonstrating compliance. This has been an incredibly effective and efficient compliance incentive that is far superior to levying fines. Although

the California Government Code expressly provides cities with the right to require forfeiture of deposits for ordinance violations, the same is specified for counties. In most cases the highest fine that the County can impose for most first time code violations is \$100. This maximum fine amount is dictated by State law and has remained the same for over a decade. Even 10 years ago that amount was too low to serve as a disincentive for violating County Code. However, a decade later the cost of living and more importantly disposal/recycling costs have increased significantly quite dramatically. DCD staff identified this as an area of concern and there has been a SUPPORT position addressing this exact need in the County's State Legislative Platform since at least 2007.

- c. Role of Building Inspectors tied to Debris Box Decal Requirement: If efforts to enforce the container marking requirements in Title 14 prove to be inadequate or insufficient that Chapter 418-2 were to be revised in the future to require County issued decals for debris boxes/containers, Building Inspectors could alert Environmental Health if they observe Debris Boxes without decals when visiting jobsites to conduct inspections.

4. **Law Enforcement –**

- a. Source separated recyclables - Recyclables belong to the generator until they are given/donated to another party or placed out for collection.
 - i. **City of Concord** – The City's Franchise Agreement requires that their Franchise Hauler (Concord Disposal Service owned by Garaventa Enterprises) fund one-half of the cost of a full-time CSO (which is a non-sword officer that works for their Police Department). This is the only local model staff is aware of where law enforcement has an ongoing active role in helping address theft of recyclables. However Concord's CSO apparently focus enforcement efforts on combating poaching of recyclables from commercial customers.
 - ii. **Poaching (Theft) of Recyclables Prohibited by Multiple Existing State Laws and Regulations** - Imposing new Ordinance requirements at the local level is unnecessary and duplicative because there are already State laws and regulations in place which prohibit poaching (theft) of recyclables placed out for collection by the Franchise Haulers.
 - A. Recyclable Theft and Penalty Options - PRC: The franchisees have expressed concerns about the theft (poaching) of recyclable materials, primarily from commercial customers, along their routes. State law includes additional more stringent provisions which can be found in the California Public Resources Code (PRC) but which is not enforced by CCEH, as the LEA. Violations of these PRC Sections involving the theft of recyclables are subject to criminal enforcement (if not handled as a civil matter) by applicable enforcement authorities (e.g. local law enforcement). . Sections 41950 and 41951 include language specifying that residential and

commercial recyclables become the property of the collection service operator as soon as they are placed out on the curb (or other designated pick-up location) for collection. These sections also expressly prohibit persons from removing residential or commercial recyclables placed out for collection. PRC Section 41955 allows the theft of recyclables valued between \$50 and \$950 to be charged as either a misdemeanor or an infraction, unless it is a second or subsequent violation which must then be charged as a misdemeanor punishable pursuant to Section 19 of the Penal Code. Additionally, PRC Section 41953 specifies the maximum civil penalty amounts that courts are allowed to award in response to civil actions brought by the designated recycler; the amount allowed for the first violation (\$2,000) is less than half of the amount allowed for subsequent violations within any 12-month period (\$5,000). Alternatively, courts may award treble damages instead if greater than applicable civil penalty limits.

- B. Report Fraudulent Activities to the State: CalRecycle's Division of Recycling is responsible for the California Refund Value (CRV) recycling program. The State provides assistance and resources in order to increase recovery and recycling of CRV beverage containers. CalRecycle's website lists self-haul type trucks being used to deliver beverage containers to a recycling center as one of the potentially fraudulent activities that should be reported to the Division of Recycling's toll-free tip hotline at 1-866-CANLOAD (1-866-226-5623). The Division of Recycling provides recyclers and processors with a free copy of this fraud reporting sign. By posting this sign at their places of business, recyclers and processors can help discourage fraudulent recycling activities. A Printable sign is posted on their website as is a link to request a printed fraud sign.

ATTACHMENTS:

Exhibit A: Revised County Code Chapter 418.2 – Hauler Ordinance

Exhibit B: County Counsel Memorandum – February 23, 2016

Exhibit C: Map of Unincorporated Franchise Areas

G:\Conservation\David\Hauler Ordinance\February 2016 IOC Meeting\Joint Staff Report to IOC_2-29-2016_CLEAN.docx