



Contra
Costa
County

To: Board of Supervisors

From: William Walker, M.D., Health Services Director &, John Kopchik, Conservation & Development Director

Date: July 11, 2017

Subject: INTRODUCE ORDINANCE TO ESTABLISH A PERMIT PROGRAM FOR SPECIFIED NON-FRANCHISED SOLID WASTE HAULERS

RECOMMENDATION(S):

1. INTRODUCE Ordinance No. 2017-16, which would establish a permit program for specified non-franchised solid waste haulers, WAIVE reading, and FIX August 1, 2017 for adoption.
2. DIRECT the Conservation and Development Director or his designee to return to the Board on August 15, 2017 with a status report regarding proposed ordinance-related amendments to the County's franchise agreements with Allied Waste Systems, Crockett Sanitary Service, Garaventa Enterprises and Richmond Sanitary Service.
3. DIRECT the Conservation and Development Director or his designee to return to the Board in the fall of 2017 with a report regarding requests by Allied Waste Systems, Crockett Sanitary Service and Garaventa Enterprises for exclusive rights to collect construction and demolition debris, including analyses of potential benefits and market impacts.

FISCAL IMPACT:

Contra Costa Environmental Health's (CCEH) Solid Waste program has a staff of five field

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **07/11/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 11, 2017

, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Deidra Dingman
(925) 674-7203

cc:

inspectors, one clerical worker, and one supervisor supported by the current fee structure. The Division will need to identify and address staffing needs associated with this new ordinance but will be able to commence implementation of the proposed ordinance with its current staff. As with CCEH's other regulatory programs, permit fees are proposed to provide funding to support implementation and enforcement. Therefore, introduction of this Ordinance is not expected to impact the General Fund.

FISCAL IMPACT: (CONT'D)

Department of Conservation and Development (DCD) staff time spent preparing a report about amending the County's four Franchise Agreements will be funded by solid waste/recycling collection franchise fees.

BACKGROUND:

Historical Need

Illegal dumping is a countywide problem. CCEH has investigated numerous complaints of illegal dumping. In some instances, unregulated haulers that were hired by private parties to remove refuse, dumped the collected material along roadways or on vacant lots. CCEH has also identified more than 41 illegal solid waste transfer stations, located in both incorporated and unincorporated Contra Costa County, that work directly with unregulated haulers. Unregulated solid waste haulers often go undetected because they dump their collected waste at illegal transfer stations and other unapproved sites.

The illegal transfer stations have not undergone the required environmental review or permitting processes, and pose significant threats to public health and the environment. For example, these operations will sort through mixed loads of waste material, remove the valuable material for recycling, and abandon the remainder, dumping it on roadsides, burning it, burying it, or pushing it into creeks. There are safety issues as well, as the Sheriff's Department has found unregulated haulers transporting poorly-secured loads on County roads.

Significant public resources are expended dealing with both illegal dumping and illegal solid waste operations. Working in cooperation with the District Attorney's Office and other agencies, CCEH has shut down 32 illegal transfer station operations since early 2015. CCEH also anticipates shutting additional stations down in the future. However, lack of regulation makes it very difficult to effectively target the solid waste haulers who are contributing to this problem. The proposed ordinance will help to combat the problem by requiring solid waste haulers to obtain and maintain a solid waste collection and transportation permit and transport collected waste only to lawfully operated solid waste or recycling facilities.

IOC Referral

On May 8, 2012, the Board of Supervisors referred to the Internal Operations Committee (IOC) a review of Chapter 418-2 of the County Ordinance Code (attached as Exhibit B) in order to address a number of problems with illegal haulers including:

- Complaints that unregulated haulers have been hired by private parties to remove refuse and have subsequently dumped the collected material along roadways and on vacant lots.
- Incidents in which the Sheriff's Department found unregulated refuse haulers with

improperly secured loads, which pose a hazard to motorists if items fall onto roadways.

- Haulers that have been found transporting the collected materials to illegal transfer stations that have not undergone the required environmental review or permitting processes, and pose significant threats to public health and the environment.
- Haulers that have been found collecting residential or commercial garbage in violation of local franchise agreements.[\[1\]](#)
- Haulers that are not posting the bond required by Contra Costa County Ordinance Section 418-2.006. This bond is intended to ensure compliance with applicable laws. It is questionable if illegal haulers carry liability insurance, and they may not be in compliance with tax or labor laws.

The IOC held discussions on this matter at a number of meetings over four years, during which substantial work and change in the scope of a draft ordinance occurred. In 2015, discussions started focusing on reconciling the draft ordinance with the County's existing franchise agreements, if and how the initial scope of the ordinance should or could be expanded or limited, exemptions to the ordinance, and how and by whom the ordinance could effectively be enforced.

In October 2015, the IOC requested the preparation of a final draft ordinance for IOC review in February 2016. In February 2016, the IOC reviewed a joint report from the Directors of CCEH and DCD on the status of the development of a solid waste hauler ordinance and related policy matters as well as the proposed version of the revised Chapter 418-2 ordinance. The IOC also considered a memo prepared by County Counsel that compared the 2016 draft to an October 2015 draft. Additionally, at several IOC meetings County franchise hauler representatives advocated that the County grant exclusive construction and demolition debris collection privileges as another strategy to combat illegal dumping, and give a so-called “5-Year Rule notice” to current non-franchise haulers to hasten the transition. At the conclusion of this discussion and analysis, the IOC provided the following direction to staff:

1. Introduce the proposed ordinance to the Board of Supervisors and have it take effect upon approval of a \$20,000 performance bond requirement and minor amendments to County franchise agreements to facilitate consistent permitting by clarifying the industrial waste and exception provisions of those agreements.
2. Provide haulers with proposed model amendments to the County's four franchise agreements.
3. Schedule the 5-Year Rule noticing for Board of Supervisors' consideration, to maximize County's future solid waste franchising decision-making flexibility.
4. Request that the Franchise haulers seek franchise cities' police departments' willingness to enforce Public Resources Code sections 41950, 41951 and 41955

pertaining to the theft of recyclables.

This report intends to implement the direction provided to staff by the IOC, though the recommendation from staff is to approve the ordinance which could take effect prior to the minor amendments to the County franchise agreements intended to clarify the Industrial Waste and Exceptions sections. Interpretation regarding potential conflicts between hauling services governed under the County's franchise agreements and hauling proposed in applications for permits required by the proposed ordinance would be more straightforward with these minor amendments in place, however agreement has not yet been reached with the franchise holders. Staff is hopeful that this report and Board direction will create an opportunity to further explore the minor amendments, as well as the more substantive amendments requested by the franchise holders, and staff is proposing to report back in the future on both of these items. Since permits under the ordinance will not be issued until 2018, staff believes it will be possible to reach agreements about the minor amendments to clarify the franchise agreements before permits would take effect on January 1st. Although it would add complexity to making franchise conflict determinations about hauling permit applications, staff is still confident that ordinance implementation and enforcement would not be compromised if the minor amendments are not in place.

Ordinance Content

The primary hauling activities expected to be regulated under Proposed Ordinance No. 2017-16 (attached as Exhibit A) are junk removal and collection of construction and demolition debris. The ordinance contains operational and permit requirements, including the need to obtain a solid waste collection and transportation permit. Hauler vehicles would be inspected to ensure that certain minimum standards are met. A hauler vehicle would have to be clearly marked with the name and phone number of the hauling business, kept in a clean and sanitary condition and be able to safely contain the waste materials during transport. A hauling business would need to keep track of the location where materials are collected, amounts and types of waste collected, and the ultimate location of disposal or recycling. The data would be forwarded to CCEH on a quarterly basis and shared with other agencies upon request (e.g. waste authorities). An approved hauling vehicle would have a visible permit decal affixed to the rear of the vehicle, similar to other types of vehicles regulated by CCEH, to facilitate enforcement. Proposed Ordinance No. 2017-16 also contains language specifically intended to help avoid issuance of permits that would conflict with exclusive hauling rights granted by franchising agencies in agreements governing waste collection services in the unincorporated areas.

Requirements that already exist in State law were not duplicated in the proposed ordinance. For example, State regulations require that debris boxes be marked with the name and phone number of the hauling company. CCEH, in its capacity as the local enforcement agency (LEA) for solid waste, can enforce the State standard throughout the entire county, except for the City of Pittsburg, which is its own LEA. CCEH has

previously informed franchise haulers that they can refer issues related to these State standards to the LEA for investigation. Though the State regulations specify certain minimal requirements associated with hauling, such as bin marking, they do not contain a requirement for hauler permits.

Ordinance Implementation

CCEH is developing certain documents and procedures associated with the implementation of the ordinance in cooperation with DCD. The documents include an application form, inspection form, informational brochure targeted at haulers and other interested parties, and a waste reporting template.

Permit Applications: CCEH and DCD are working together to develop 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 pertinent Franchise related variables necessitate that permit applicants provide a significant level of detail about the hauling services for which they are seeking a permit, including:

- Clearly identified service area boundaries defining the extent of geographic territory they plan to serve,
- Type of waste generator (customer) they plan to collect from (e.g. residential, commercial, light industrial, heavy industrial, or governmental),
- Types of waste they plan to collect from each type of generator served (waste type classifications to be listed on the application will primarily be driven by language defining the scope of exclusivity in the franchise agreements governing collection services in the proposed service area.
- Types of waste that are to be removed as an incidental included service, such as on-site clean-up services (which may involve removal of any and all types of solid waste), separately from those types which are not, to ensure clear delineation of any waste types they would offer to collect if placed out for pick-up by customers, as these circumstances are more likely to result in franchise-related conflicts.

Franchise Agency Referral Process: This coordination with County and Non-County Franchise Agencies is intended to help CCEH avoid issuing permits for hauling activities that would conflict with the respective franchise(s) in effect at the time. Currently, there is no readily accessible comprehensive map delineating the exact boundaries of each of the nine unincorporated franchise service areas (Exhibit C, attached to this report is a general map of these service areas). Of these nine franchise service areas, four are County Franchises and the remaining five are Non-County Franchises. Franchise Agencies are the most qualified authorities to make determinations as to whether or not locations fall within their respective franchise service areas. DCD will act as the Franchise 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, which collectively

govern services for roughly 53% of the unincorporated population. Non-County Franchises are administered by the following five local public agencies, which collectively govern services provided to approximately 47% of the total unincorporated population:

1. *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.
2. *Byron Sanitary District* – Special District solely responsible for a portion of Byron
3. *Kensington Police Protection and Community Services District* – Special District solely responsible for collection services in Kensington
4. *Mt. View Sanitary District* – Special District responsible for unincorporated Martinez, including some land near Pacheco Blvd. and Arnold Dr.
5. *Rodeo Sanitary District* – Special District solely responsible for collection services in Rodeo

Under the proposed ordinance, 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 that conflict with their franchise agreements or any hauling ordinances. If no response is received after a 30-day review period, CCEH will proceed with the permitting under the presumption that it would not violate non-responsive agencies' franchise agreements. Permits will not be issued for any hauling services described on the application which franchise agency(ies) determine would potentially conflict with one or more local franchise agreements or hauling ordinances.

Preparing for and Tracking Implementation: Once implemented, CCEH will keep track of those haulers that obtain permits, those found operating without permits, and the relationship between the haulers and illegal transfer stations. At a later date, CCEH will provide a report to the Board about the successes and/or deficiencies that are identified. The ordinance would take effect 30 days after it is adopted. However, permits would not be required until January 1, 2018. Actions that staff proposes to take prior to the permit requirement taking effect on January 1, 2018, would include:

- Finalizing permitting forms and associated documentation, such as instructions for haulers and agency coordination notices,
- Developing written procedures for the processing of the application,
- Modifying electronic tracking software to include new hauler permit program, which will among other things trigger follow-up action when 30 days has elapsed, and
- Conducting outreach to raise awareness about the new permit requirement, so that companies/persons known to haul waste receive written notice and can take steps required to ensure their operation is compliant.

Permits would be valid for one calendar year. CCEH will be returning to the Board with

a proposal to approve fees to pay the costs of permit processing and enforcement and set the amount of a performance bond or equivalent security.

Enforceability

There are a number of issues related to enforceability of proposed Ordinance No. 2017-16.

Complex Hauling Permit Parameters Due to Franchises: Implementing a waste hauler permit system in a County where waste collection is already governed by multiple different local agencies pursuant to separate franchise agreements that grant varying degrees of exclusivity poses complex enforceability challenges. These variables do not allow for permitting uniformity and pose enforcement challenges.

To avoid conflicts with franchise agreements, permits will authorize hauling only certain specified waste types from customers located within a defined permit-specific territory, which may be further limited by customer type (e.g. only residences).

Investigations Required to Make Hauling Activity Compliance Determinations: Readily visible permit decals would make it relatively easy to spot a permitted hauling vehicle. It may be more challenging, however, to determine if such a vehicle is hauling the types of waste authorized to be hauled, in the permitted service area. Additionally, there are a number of exemptions under the proposed ordinance, so further investigation might be needed to determine if a hauling vehicle that does not display a permit decal is evidence of a violation of the permit requirement, or is instead being driven by a person exempt from that requirement. Ultimately, enforcement of the proposed ordinance will likely be driven by complaints.

Other Local Ordinances Governing Waste Hauling: Waste hauling ordinances adopted by non-County franchise agencies may also impact enforcement of proposed Ordinance No. 2017-16. Other local agency ordinances reviewed by CCEH staff to date do not appear to conflict with the proposed ordinance, but new ordinances could be adopted in the future that may pose challenges. An ordinance adopted by the Central Contra Costa Solid Waste Authority (CCCSWA) established its existing permit system applicable to construction and demolition (C&D) debris transporters operating within the CCCSWA's territory, which includes some pockets of the unincorporated area. Staff is not aware of any other hauler permit systems being implemented in the unincorporated areas.

ADDITIONAL IOC DISCUSSION & DIRECTION

The nature of the hauling activities to be regulated under the proposed ordinance prompted interested stakeholders to raise a number of policy issues, discussed below, in addition to the proposed ordinance.

Hauling Regulated by County Franchises

Ordinance-related Franchise Agreement Amendments: To facilitate consistent regulation of haulers through the permitting process established under the ordinance, minor

amendments to the County's four franchise agreements are recommended for clarification purposes. These minor franchise amendments would standardize the definitions of industrial waste and clarify limitations applicable to junk removal. DCD staff has provided proposed franchise agreement amendments to each of the County's franchise haulers. To date, none has been executed and returned. Although desirable from the standpoint of processing permit applications, it is not necessary that any of the proposed minor ordinance-related franchise agreement amendments be fully executed prior to the proposed ordinance taking effect.

Non-ordinance related Franchise Amendment: County franchise hauler representatives raised the issue of amending three of the County's franchise agreements to provide franchisees with the exclusive privilege and duty to collect construction and demolition debris, similar to what is provided for in the County's oldest franchise agreement which governs collection services provided by Richmond Sanitary Service. Expanding franchise exclusivity to include additional waste type(s) has substantial policy implications that warrant further research and analysis to better inform the Board before making this important policy decision. At the Board's direction, staff will be prepared in the fall of 2017 to present a detailed report regarding franchise exclusivity options and alternatives for Board decision. This report would present analysis to the Board of the advantages and disadvantages of making such changes to the franchise agreements and explanation of the process for implementing any changes, including the 5-Year Rule, discussed briefly below.

5-Year Rule: State law establishes noticing requirements applicable to exclusive waste hauling services and limits the degree to which local agencies can enforce exclusive waste hauling rights and responsibilities for an initial five year period. Section 49520 of the California Public Resources Code states:

“If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services 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 that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.”

This is often referred to as the “5-Year Rule.”

If the Board first determines that exclusive solid waste handling services for construction and demolition debris are to be provided, only then would a 5-Year Rule notice be given. If a 5-Year Rule notice is to be given, staff would then need to identify the appropriate recipients of that notice – i.e., businesses that have been lawfully providing the soon-to-become exclusive solid waste handling services for more than three previous years. Since the County has not been issuing permits to non-franchise haulers, names and addresses of potential notice recipients may need to be culled from the County's database

of business license holders.

Enforcement

The IOC expressed interest in several enforcement-related issues that came up when the ordinance was being discussed. These include funding, penalties, debris box identification, role for building permitting/inspection, role for law enforcement and poaching of recyclables. In most cases, the concerns identified were found to be the subject of other existing state or local laws or regulations. Staff did not propose ordinance requirements be included in Chapter 418-2 if there is already something similar in state laws or regulations that fall within the enforcement purview of a County department.

Debris Box Identification: The County's franchise haulers advocated that the County prohibit unmarked debris boxes and unmarked hauling vehicles by expanding the scope of the proposed ordinance. However, both are already addressed by existing requirements in Title 14 of the California Code of Regulations (CCR). There are a number of requirements and standards in Title 14, Sections 17301-17345 that are applicable to waste hauling vehicles and containers, which includes debris boxes (i.e. dumpsters, roll-off boxes). As the LEA for solid waste, CCEH is authorized to enforce the state's solid waste standards in Title 14.

CCR Title 14, 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). Refuse haulers, contractors and local building departments throughout the County can refer complaints about possible violations, such as unmarked debris boxes, to their local 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.

Building Permitting & Inspection: Interested stakeholders expressed desire for having DCD's building permit process modified to assist future hauling enforcement efforts since development projects generate construction and demolition waste. In early 2017, DCD modified the County's CalGreen recycling forms that owners must complete and submit for building projects that are subject to CalGreen Building Code's recycling requirements. The updated forms now in use by DCD's Application and Permit Center staff require identification of the name of the person or company responsible for hauling debris from the applicable jobsite. The updated forms enable DCD to offer project-specific hauler information collected during the Building Permit process to CCEH (upon request).

Potential Role for Building Inspectors tied to Expansion of Decal Requirements: If CCEH's efforts to enforce the container marking requirements in Title 14 do not prove

sufficient to identify the hauling company, the Board could direct staff to revise Chapter 418-2 in the future to require County issued decals for debris boxes/containers. If all debris boxes were required to display County issued decals, it would be more potentially feasible for Building Inspectors to play a role in helping support the LEA's enforcement efforts if they observe debris boxes without decals while conducting jobsite inspections. If Building Inspectors were charged with this additional task, DCD may need to collect additional fee revenue to offset the cost of any staff time spent on debris boxes. It is worth noting that a Building Inspector spends limited time at each jobsite, and only during certain stages of construction, which does not necessarily coincide with the timeframe that the debris box may be present and visible on site. Even if the debris box happens to be present, on a large construction site, the Inspector may not be in close proximity to the box when conducting their inspection, and therefore may not be able to see the box or any of its identifying features.

Penalty for Violating CalGreen: At the IOC meeting on October 12, 2015, 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 Final Inspection from the Building Inspection Division. The County does not 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.

Theft of Recyclable Materials: The County's franchise haulers have expressed concerns about the theft (poaching) of recyclable materials, primarily from commercial customers, along their routes. Source separated recyclables belong to the person who generated them (generator) until the recyclables are given, donated or sold to another party or placed out in designated location/receptacle for collection. Addressing this issue in the proposed ordinance, however, is not necessary, because poaching (theft) of recyclables placed out for collection by the designated collector (franchise hauler) is already prohibited by multiple existing state laws and regulations. Violations of Public Resources Code sections involving the theft of recyclables are subject to criminal enforcement. Public Resources Code sections 41950 and 41951 specify 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) and expressly prohibit persons from removing recyclables placed out for collection.

Public Resources Code 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, Public Resources Code section 41953 specifies the maximum civil penalty amounts that courts are allowed to impose 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.

State Addresses Fraudulent CRV Recycling Activities: ~CalRecycle's Division of Recycling is responsible for the California Refund Value (CRV) recycling program. 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).

[\[1\]](#) Persons who haul routinely generated Residential Solid Waste and/or Commercial Solid Waste or recyclables from homes or businesses in the unincorporated areas without entering into a franchise agreement with the County would be in violation of Section 418-7.602 of the County Ordinance Code. This does not apply to the hauling of construction or demolition waste, industrial waste or septage).

ATTACHMENTS

Exhibit A: Proposed Ordinance 2017-16 _ Permitting of Non-Franchise Solid Waste Haulers

Exhibit B: Existing Chapter 418-2

Exhibit C: Map of Unincorporated Franchise Areas