



Contra
Costa
County

To: Board of Supervisors

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

Date: August 1, 2017

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

RECOMMENDATION(S):

1. FIND that the adoption of the Solid Waste Collection and Transportation Ordinance (Ordinance No. 2017-16) and related actions to adopt permit fees and a performance bond amount are exempt from environmental review under Sections 15061(b)(3) and 15273(a)(1) of the California Environmental Quality Act (CEQA).
2. ADOPT Ordinance No. 2017-16, which would establish a permit program for specified non-franchised solid waste haulers.

FISCAL IMPACT:

The Environmental Health Division of Contra Costa County's Health Services Department financed with fee revenue. Contra Costa Environmental Health's (CCEH) Solid Waste program has a staff of five field 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.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☒ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **08/01/2017** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

Contact: Julie DiMaggio
Enea (925) 335-1077

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: August 1, 2017

, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

As with CCEH's other regulatory programs, permit fees will be proposed to provide funding to support implementation and enforcement. Therefore, adoption of this Ordinance is not expected to impact the General Fund.

BACKGROUND:

On July 11, 2018, the Board of Supervisors introduced Ordinance 2017-16, which would establish a permit program for specified non-franchised solid waste haulers. Illegal dumping is a countywide problem and the proposed ordinance is meant to help curtail the practice of illegal dumping. 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.

Ordinance Content

The primary hauling activities expected to be regulated under proposed Ordinance No. 2017-16 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. 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. 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 will take effect 30 days after it is adopted. However, permits will 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 will be valid for one calendar year.

CCEH will also return to the Board with recommendations for the type and amount of the performance bond or equivalent security that will be required under Ordinance No. 2017-16, and fees to pay the costs of issuance of permits, inspections and enforcement activities associated with the program.

California Environmental Quality Act (CEQA)

For the purposes of compliance with CEQA, the project consists of the Ordinance as well as the establishment of the related performance bond and permit fee amounts. Based on the record before the County, DCD has determined that the whole of this project is exempt from CEQA pursuant to Section 15061(b)(3) and Section 15273(a)(1) of the CEQA guidelines. Section 15273(a)(1) specifies that fees established by public agencies to meet operating expenses are exempt. Section 15061(b)(3) provides that an activity is exempt if there is no possibility that the activity in question may have a significant effect on the environment. The Notice of Exemption (NOE) shall not be filed until after the County approves the project, therefore the Board is expected to direct DCD to file the NOE if and when it adopts the resolutions establishing bond and fee amounts at a future meeting.

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.

CLERK'S ADDENDUM

CONTINUED to August 15, 2017.

ATTACHMENTS

Ordinance 2017-16 Solid Waste Hauler Permitting Program