



**Contra  
Costa  
County**

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: August 15, 2017

Subject: OPTIONS FOR POTENTIAL FUTURE AMENDMENTS TO THE COUNTY'S COLLECTION  
FRANCHISE AGREEMENTS

## **RECOMMENDATION(S):**

1. RECEIVE report from the Conservation and Development Director regarding the status of proposed minor amendments to the County's solid waste franchise agreements related to proposed Ordinance No. 2017-16 ("Waste Hauler Ordinance" or "Ordinance").
2. DIRECT the Conservation and Development Director or his designee to return to the Board no later than November 14, 2017, with a report comparing the relative merits and implications of a range of options for amending the County's solid waste franchise agreements that includes the minor Ordinance-related amendments, proposed amendments from County franchise solid waste haulers to expand their exclusive hauling privileges to include the collection and removal of construction and demolition waste, and alternative means of regulating the handling of construction and demolition (C&D) waste.
3. AUTHORIZE the Conservation and Development Director or his designee to work with the County franchise solid waste haulers to ensure the parameters of their proposal to amend their respective franchise agreements to expand their exclusive hauling privileges to include the collection and removal of construction and demolition waste are adequately defined for

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **08/15/2017** ☒ 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: August 15, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Jami Napier, Deputy

Contact: Deidra Dingman,  
(925) 674-7203

cc:

the purpose of assessing the relative merits compared to other options to be considered.

## FISCAL IMPACT:

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. Therefore, approval of staff's recommendation(s) is not expected to result in any impact on the General Fund.

## BACKGROUND:

### **Summary**

On July 11, 2017, the Board of Supervisors directed the Department of Conservation and Development (DCD) to return on August 15 to report on the status of minor amendments to the County's four franchise agreements intended to clarify aspects of those agreements and aid implementation of the Waste Hauler Ordinance. The Board also directed DCD to provide a report in the Fall of 2017 regarding the County's franchise haulers' requests for other amendments that would provide exclusive rights to collect construction and demolition debris, including direction to analyze potential benefits and market impacts of this proposal and alternatives to it. The franchise haulers do not wish to enter into the proposed minor amendments at this time and have instead asked that the issue be deferred until the Board considers their request to expand franchise exclusivity. Staff recommends that these matters be addressed as part of a report to be presented to the Board no later than November 14, 2017. Lastly, staff is seeking authority to negotiate with the franchise haulers regarding the terms of the proposed C&D exclusivity option so that a fleshed out version of this proposal may be considered and assessed relative to the other options to be presented in November.

### **Detailed Explanation**

Illegal dumping is a countywide problem. Some illegally dumped waste has been tied to loads of debris that unregulated haulers were hired to remove by residents or businesses. In 2012, the Board of Supervisors (Board) referred to the Internal Operations Committee (IOC) development of an ordinance to regulate solid waste hauling (referred to as the "Waste Hauler Ordinance") in order to address a number of problems with illegal haulers. On July 11, 2017, the Board introduced Ordinance No. 2017-16, which would establish a permit program for specified solid waste haulers.

The primary hauling activities expected to be regulated under Ordinance No. 2017-16 are the collection of construction and demolition (C&D) debris and waste from junk removal services. The nature of these hauling activities prompted the County's franchise haulers to raise issues related to franchise hauling exclusivity when the ordinance was discussed before the IOC. Since franchise exclusivity is a separate policy matter that was not part of the referral from the Board, the IOC elected to address the matter by providing separate franchising recommendations. At the February 2016 meeting, the IOC directed staff to take the two following actions related to the County's franchises:

- Provide haulers with proposed *minor amendments* to the County's four franchise agreements to clarify the definition of Industrial Waste and Exceptions sections.
- Schedule the *5-Year Rule noticing* for Board of Supervisors' consideration, to maximize County's future solid waste franchising decision-making flexibility.

When the Board introduced Ordinance No. 2017-16 on July 11, 2017, the Board directed the Conservation and Development Director or his designee to return on August 15, 2017, with a status report on the minor, ordinance-related franchise agreement amendments, and in the Fall of 2017 with a report assessing the franchise haulers' requests for exclusive rights to collect construction and demolition debris.

Minor Ordinance-Related Franchise Agreement Amendments: Pursuant to the direction provided by the IOC, staff prepared proposed amendments to the County's four franchise agreements for the purpose of standardizing the definition of industrial waste and clarifying the exceptions to the exclusive franchises that apply to junk removal services.

*Industrial Waste* – Section 418-2.008(e) of Ordinance No. 2017-16 exempts from the permit requirement the collection and transport of “solid waste that is generated in a mechanized manufacturing process or at a publicly operated treatment works.” Three of the County franchise agreements do not currently include “publicly operated treatment works” in the industrial waste exception to their exclusive franchises. For the sake of consistency, it is desirable to amend the Industrial Waste definition in those franchise agreements.

*On-site Clean-up / Junk Removal Services* – One of the hauling activities intended to be governed under the permit that would be required under Ordinance No. 2017-16 is the removal and recycling or disposal of unwanted items from private property where such is directly associated with an on-property service provided directly to the customer, and which is not provided by the franchise hauler. To ensure that hauling provided by those companies conducting on-site junk removal and clean-up services would consistently be subject to permit requirements in the new Ordinance, it is preferable that the exclusivity exception language in the County's four franchise agreements be revised. The purpose of revising the exception language applicable to on-property services, like remodeling and gardening, is to facilitate consistency and provide greater clarity about limitations applicable to hauling by on-site clean-up (junk removal) services.

DCD staff presented the proposed minor franchise agreement amendments to each of the County's four franchise haulers, consistent with the direction provided by the IOC. The County's franchise haulers have reviewed and provided feedback regarding the proposed amendments. However, the franchise haulers have indicated that they will not presently consent to the amendments, in anticipation of potentially more substantial amendments that will be considered by the Board of Supervisors in November relating to the policy

issue of franchise exclusive hauling privileges for C&D debris. The franchise haulers have requested that approval of the proposed minor amendments be deferred until later this year, when they could be considered as one alternative among the options to be presented to the Board in November.

Since it is not necessary that the County amend its franchise agreements in order to implement Ordinance No. 2017-16, which would require waste hauling permits effective January 1, 2018, staff recommends that the Board defer consideration of the minor amendments until they can be presented as one of several options for consideration by the Board no later than November 14, 2017.

5-Year Rule Noticing: The Board has authority under Public Resources Code section 40059 to determine whether solid waste handling services are to be provided by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, if, in the opinion of the Board, “the public health, safety, and well-being so require.” However, state law limits the degree to which local agencies can enforce exclusive solid waste handling services.

Specifically, Public Resources Code section 49520, commonly referred to as the “5-year rule,” provides temporary continuation rights, and in some cases obligations, to existing haulers under certain circumstances. The statute states, in part:

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. If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of the contract or franchise or five years, whichever is less.

Because the notice must say that exclusive solid waste handling services are to be provided or authorized, a policy decision by the Board – i.e., that certain solid waste handling services are to be provided exclusively -- would need to be made before a notice is given to haulers that meet the criteria described above. At this point, staff does not know precisely how many haulers might meet the criteria with regard to the hauling of construction and demolition debris, as the only County authorizations they might have are business licenses, which do not necessarily specify the services that a business provides. The pool of potential businesses to be notified is therefore quite large. Although staff will need to research this issue further, establishment of the permit requirement in Ordinance No. 2017-16 might serve to reduce the number of haulers to whom a notice would need to be provided under the 5-year rule.

Assessing Franchise Exclusivity as Compared to Alternative Approaches to Regulating C&D Handling: 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, while others impose more extensive permit conditions (including diversion requirements) or impose on-going fees (somewhat like a franchise fee). Each of these approaches has its advantages and disadvantages. Assessing which is the best can be quite subjective and vary greatly from agency to agency, as it depends upon the circumstances and the goals/needs of the agency.

There are a number of County franchise-specific variables that govern what types of waste a selected franchise hauler has the exclusive right and responsibility to collect. These franchise exclusivity variables include geographic territory (designated franchise service area), the type of waste generator/customer (such as residence or business), 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).

As noted previously, County franchise hauler representatives raised the issue of amending three of the County's franchises to provide franchisees with the exclusive privilege and duty to collect C&D debris. Expanding the scope of franchise exclusivity has substantial implications that warrant further research and analysis in order for staff to properly inform the Board about this important policy decision.

Staff has been directed to return to the Board with a report identifying the advantages and disadvantages of various approaches for consideration in conjunction with the franchise haulers request to expand franchise exclusivity to include C&D debris. See attached Table 1 for a general comparison of the potential benefits of various collection system options prepared in 2012 by a consultant hired by the County as part of a larger report (copies available upon request). Staff intends to supplement and update the information from said report as needed to reflect current conditions for inclusion in the report to be presented to the Board in November.

#### CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not authorize the Conservation and Development Director to work with the County franchise solid waste haulers to identify the details needed for staff to assess the relative merits of their proposal to amend franchise agreements to expand their exclusive hauling privileges, staff will not be able to compare their proposal to the other potential options when reporting back to the Board on November 14, 2017. If the Board does not direct DCD to report back to the Board in November, DCD would not present the Board with a report comparing the relative merits and implications of a range of options alternative means of regulating the handling of construction and demolition (C&D) waste.

#### ATTACHMENTS

Table 1: Comparison of Potential Benefits of Collection System Options