



**Contra
Costa
County**

To: Board of Supervisors
From: William Walker, M.D., Health Services Director
Date: September 26, 2017

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

RECOMMENDATION(S):

1. FIND that the adoption of Ordinance No. 2017-16, is exempt from environmental review under Section 15061(b)(3) of the California Environmental Quality Act Guidelines.
2. ADOPT Ordinance No. 2017-16, which will establish a permit program for specified non-franchised solid waste haulers.
3. CONSIDER directing the Environmental Health Director or designee to return to the Board on October 17, 2017 with recommendations regarding potentially feasible amendments to Ordinance No. 2017-16 in response to revisions jointly proposed by the franchised solid waste haulers.

FISCAL IMPACT:

<input checked="" type="checkbox"/> APPROVE <input checked="" type="checkbox"/> RECOMMENDATION OF CNTY ADMINISTRATOR	<input type="checkbox"/> OTHER <input checked="" type="checkbox"/> RECOMMENDATION OF BOARD COMMITTEE
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Action of Board On: **09/26/2017** ☐ 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: September 26, 2017

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

By: , Deputy

cc:

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

FISCAL IMPACT: (CONT'D)

but will be able to commence implementation of the proposed ordinance with its current staff.

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, 2017, the Board of Supervisors introduced Ordinance 2017-16 (attached as Exhibit A), which would establish a permit program for specified non-franchised solid waste haulers, waived the reading, and fixed August 1, 2017 as the date for adoption. The proposed ordinance will require 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.

The introduction of the ordinance came after the Board of Supervisors referred the ordinance to the Internal Operations Committee (IOC) in 2012 for study and recommendation (see Exhibit C for additional background). 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. County franchise haulers participated in the IOC meetings, helping to ensure that the ordinance did not infringe on franchise agreements, and proposing that additional issues beyond the illegal dumping and transfer stations be addressed. Ordinance No. 2017-16 focuses on addressing the illegal dumping and transfer station problems. As part of a separate Board directive, the Department of Conservation and Development (DCD) has been charged with reporting back to the Board in November 2017 regarding franchised haulers' requests that the County amend its franchise agreements to grant requested exclusive C&D hauling rights as one of several alternative methods of regulating construction and demolition (C&D) debris hauling.

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.

Franchise Haulers' Request for Amendments

On July 27, 2017, two work days prior to the scheduled ordinance adoption, the County

received a letter co-signed by franchise haulers, Republic Services and Garaventa Enterprises, requesting specific revisions to Ordinance No. 2017-16. County staff from three different departments (DCD, CCEH and County Counsel's Office) met with the franchise hauler representatives on August 11 and August 25 to discuss the proposed revisions for the purpose of identifying mutually acceptable potential changes that staff could present for Board consideration.

Based on those discussions, County staff has identified those changes that are acceptable to County staff in the near-term either as proposed or in a slightly different manner, and changes that County staff cannot recommend either as proposed or conceptually without further research and some history implementing the waste hauler permit system. A discussion of those changes follows and references Exhibit B, attached, which is a color-coded mark-up of proposed changes for future consideration.

If the Board would like to consider potential incorporation of changes to the Ordinance in response to revisions requested by the franchised haulers, staff proposes that any such changes be considered in the form of potential Ordinance amendments in order to avoid delaying the Ordinance's adoption and initial related outreach / implementation work. Staff could return on or after October 17, 2017 to introduce a proposed ordinance amendment that incorporates those changes deemed feasible to implement in the near-term so that said changes would be operative by the time the first waste hauling permits would take effect on January 1, 2018. The Board could direct staff to return at a later date, perhaps one year from now after assessing the effect of the current proposed ordinance, to identify additional changes that could be incorporated into an ordinance amendment to address the other revisions proposed by the franchised haulers.

A. Proposed Changes County Staff is Prepared to Address in the Near-Term through a Potential Ordinance Amendment (Shown in Yellow on Exhibit B)

1. The franchise haulers were concerned that a permit issued to the non-franchised haulers would not contain sufficient details to clarify limitations intended to prevent conflict with franchise agreements. This was the basis for changes that the franchised haulers proposed in a number of different sections of the Ordinance. Staff is prepared to suggest how the Ordinance could be amended to provide additional details on what the permit must specify.
2. The franchise haulers suggested that the health permit decal be located on several locations on the permitted vehicles, not just the rear. Staff believes this is a request that can be readily included in the permitting program should the Board wish it.
3. A key reason for the proposed ordinance is preventing solid waste materials from being brought to illegal transfer/recycling station. As currently written, the requirement that waste be taken to an approved solid waste or recycling facility would only apply to a permitted hauler. Staff is amenable to moving this to the prohibition section and applying it to any hauler subject to the ordinance, whether or not said hauler has a permit.

4. Staff believes it would be most appropriate to replace the phrase “separated for reuse” with “separated for recycling” in Section 418-2.016(c)(2) because material hauled for reuse is technically not solid waste and would not, therefore, be subject to the Ordinance’s permit requirement.

B. Proposed Changes That Cannot Be Recommended by County Staff in the Near-Term Pending Further Research and Ordinance Implementation Experience (Shown in Green on Exhibit B)

County staff cannot recommend the following changes because they are inconsistent with the parameters contained in the IOC recommended ordinance introduced in July, and would inappropriately alter the scope beyond what is intended without adequate justification as to the public benefit for doing so. Staff does not have sufficient information/data to analyze the effect of these proposed changes and, therefore, recommends that they be reconsidered after the ordinance has been in effect for one year and can be evaluated, and following a public process with the haulers of industrial waste and recyclables, and solid waste authorities.

1. **Industrial Waste** - The franchise haulers are proposing that the transport of industrial waste and biosolids be regulated by this ordinance. The long-stated purpose of the proposed ordinance is to address illegal dumping and the transport of solid waste to illegal transfer stations. Industrial waste and biosolids have not been found in the waste streams associated with these problems and are not the target of the ordinance. For that reason, industrial waste and biosolids are listed as wastes exempt from the permitting requirement. Moreover, transporters of these types of waste were not included in any outreach efforts to date.
2. **Source-separated recyclables** - The franchise haulers are proposing that the transport of source-separated recyclables be regulated by this ordinance, due to concerns about the ongoing theft of recyclable materials from their commercial bins and curbside totes. Theft is an issue typically referred to local law enforcement rather than Environmental Health, as it is already illegal under state law. Source-separated recyclables have not been found in the waste streams associated with illegal dumping or illegal transfer/recycling stations; for that reason, they were not included in the proposed permitting program. Moreover, transporters of these types of waste were not included in any outreach efforts to date.
3. **Liability insurance** - The franchise haulers are proposing that the requirements to obtain a solid waste hauling permit include liability insurance in the amount of \$1,000,000 per event, and \$3,000,000 aggregate. The request is based on the franchise agreement requirement that Republic Services and Garaventa Enterprises must have the insurance. However, the franchise haulers are acting as agents of the County, whereas the non-franchise waste haulers are not. At the present time, none of the myriad activities regulated by Environmental Health include a requirement for liability insurance. While it is a sound practice that these businesses have

liability insurance, staff did not see a direct interest for the County making this a requirement of the permit. Rather than include a possibly onerous liability insurance requirement as a condition of obtaining a permit, waste hauler permit application materials can be designed to include a recommendation that the applicant check with his or her insurance agent regarding liability insurance needs, as is done with Environmental Health's cottage food program (i.e., home-based retail food businesses).

4. **Local agency permits** - The original intent of the proposed ordinance was to not duplicate efforts if another agency was issuing permits. For example, the Central Contra Costa Solid Waste Authority (Recyclesmart) issues its own permit for C&D haulers operating within its boundaries. A recent requested revision from the franchised haulers was to require these haulers to get the second permit from Environmental Health. Staff has reiterated that the intent of the proposed ordinance was not to duplicate existing permitting requirements of other jurisdictions.
5. **Due process for permit revocation** - The proposed ordinance includes provisions to revoke a permit for cause, pursuant to a reasonable due process. The franchise haulers recently proposed a provision for permit revocation based solely on a franchise agency determination that a permitted hauler encroached on its rights. This determination would be binding on the health official. Staff cannot agree to this change because it precludes consideration of other evidence and compromises a permittee's right to reasonable due process. Permit revocation is the jurisdiction of the health official whose decision should consider all relevant evidence.

Performance Bond and Fee Hearing

Section 418-2.018 of the Proposed Ordinance requires a permitted to file with the County a performance bond in an amount set by Board resolution. Section 418-2.020 of the Proposed Ordinance requires payment of a permit fee established by Board resolution. Following adoption of the ordinance and any amendments, staff will return to the Board with recommendations for action on these items.

California Environmental Quality Act

For the purposes of compliance with the California Environmental Quality Act (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.

CONSEQUENCE OF NEGATIVE ACTION:

Should the Board decide not to adopt the ordinance as introduced and direct staff the modify and re-introduce the ordinance, staff may not have adequate time to develop the program, redeploy staff, establish the permit fee and performance bond, and conduct outreach and education in time to issue permits before the end of the year.

CLERK'S ADDENDUM

Speakers: Scott Gordon, Republic Services/Mt. Diablo Resource Recovery

The Board considered advice and commentary from Mr. Gordon (representing waste haulers) and Counsel staff on the specifics of the language in the proposed ordinance, and made several modifications. Staff will return with the modified ordinance for adoption by October 24, 2017.

ATTACHMENTS

Exhibit A: Ordinance 2017-16 Solid Waste Hauler Permitting Program

Exhibit B: Color Coded Ordinance with Mark-up of Potential Amendments

Exhibit C: Background - Non-Franchise Solid Waste Hauler Permit