

Agenda Report

September 29, 2014

TO: Honorable Mayor and City Council

THROUGH: Municipal Services Committee (09/09/14)

FROM: Department of Public Works

SUBJECT: DIRECT CITY ATTORNEY TO PREPARE AMENDMENTS TO CHAPTERS 8.60 AND 8.61 OF THE PASADENA MUNICIPAL CODE; OPEN FRANCHISE SYSTEM TO COMPOSTING HAULERS; MAINTAIN THE CLOSED SYSTEM FOR SOLID WASTE AND CONSTRUCTION AND DEMOLITION HAULERS FOR ANOTHER THREE YEARS; AND PLACE ALL EXISTING FRANCHISEES ON FIVE-YEAR NOTICE TO GRANT EXCLUSIVE RIGHTS TO SOLID WASTE DISPOSAL AND PROPOSED NEW COMPOSTING HAULERS ONCE THE FIVE-YEAR NOTICE EXPIRES WITH EXCEPTION OF CONSTRUCTION AND DEMOLITION HAULERS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the Non-Exclusive Solid Waste Collection Franchise System Ordinance is categorically exempt from the California Environmental Quality Act (CEQA). A Notice of Exemption has been filed with the Los Angeles County Clerk;
2. Direct the City Attorney to draft an amendment to Chapters 8.60 ("Solid Waste") and 8.61 ("Solid Waste Collection Franchise System") of the Pasadena Municipal Code (PMC) and return to the City Council within 90 days to open the Non-Exclusive Solid Waste Collection Franchise System to composting haulers and for other administrative changes per Attachment D;
3. Open Non-Exclusive Solid Waste Collection Franchise System to composting haulers for processing organic, yard waste, and other compostable material to state approved/permitted composting facilities;
4. Retain the closed Non-Exclusive Solid Waste Collection Franchise System for solid waste haulers and construction and demolition (C&D) haulers and direct staff to report back in three years to City Council with the next review of authorized haulers to ensure competitive pricing and options for solid waste recycling and disposal; and

5. Direct the City Manager to officially place franchisees on notice of the City's intent to consider the modification of the current Non-Exclusive Solid Waste Collection Franchise System at the time the five-year notice expires pursuant to California Public Resource Code section 49520, which allows local agencies to grant exclusive operating rights to solid waste disposal and proposed new composting haulers, with the exception of haulers that collect construction and demolition debris/material only.

MUNICIPAL SERVICES COMMITTEE RECOMMENDATION

On September 9, 2014, the Municipal Services Committee (MSC) unanimously recommended that the City Council approve the recommendations contained in this report and moved the item forward to the City Council for consideration. The Committee also requested that staff review the definition of organics contained in the report presented to the Committee in response to public comments at the meeting.

EXECUTIVE SUMMARY:

On April 28, 2014, the City Council reviewed the closed Non-Exclusive Solid Waste Collection Franchise System as codified in Chapter 8.61 of the PMC (see Attachment A). The City Council considered recommendations to retain the closed non-exclusive solid waste collection franchise system and direct the City Manager to place existing franchisees on notice of the City's intent to consider the modification of the current non-exclusive solid waste collection franchise system at the time the five-year notice expires pursuant to California Public Resource Code section 49520. The City Council deferred action on the recommendations and directed staff to update the PMC to address composting haulers and provide additional information on C&D haulers and inert materials.

On September 9, 2014, the Department of Public Works staff presented an update to the MSC. The Committee unanimously recommended that the City Council approve the recommendations contained in this report and moved the item forward to the City Council for consideration. The Committee also requested that staff review the definition of organics contained in the report presented to the Committee in response to public comments at the meeting.

This report outlines proposed adjustments to the PMC responsive to the City Council recommendations on April 28, 2014, and the MSC's direction on September 9, 2014, to review the definition of organics. The Department recommends amendment of Chapter 8.60 ("Solid Waste") and 8.61 ("Solid Waste Collection Franchise System") of the PMC. These changes include the addition of composting haulers to the franchise system, correcting omissions from the original ordinances, clarifying and/or adding definitions and requirements for composting, construction and demolition debris, hauler, inert material, organics, other compostable material, self-hauler, and yard waste, and. The proposed amendments would allow composting haulers to collect organic, yard waste, and other compostable material from commercial entities including multi-family units, and single family residences.

To encourage emerging technologies and move the City toward Zero Waste by 2040, the Department proposes to open the Non-Exclusive Solid Waste Collection Franchise System to composting haulers for processing of organics, yard waste, and other compostable material to state approved/permitted composting facilities. Approximately 42% of Pasadena materials disposed of in landfills is compostable. The Department anticipates a limited number of composting haulers to enter the Franchise System due to the small number of processing facilities in the region and high cost of processing organic, yard waste, and other compostable materials.

The Department also proposes to continue managing solid waste haulers and C&D haulers under the existing closed franchise system. Performance in the current system in the key areas which led to the City Council's decision to close the system in 2007 and continue to keep the system closed in 2010 is effective, as summarized on Attachment B. This action will also ensure availability of adequate hauling resources and facilitate continued monitoring of diversion levels.

The Department recommends the City Council to approve the issuance of a five-year notice to existing non-exclusive franchise solid waste haulers with the exception of C&D-only haulers. While the City may elect not to follow through on a modification in the system, this step will enable the City of Pasadena to be prepared if the adjustment is needed. It is prudent for the City to take steps now to set the stage for future changes in the service arrangement that may be necessary to support City policy directions, including the implementation of the Zero Waste Pasadena 2040, and recent and/or anticipated state legislation including possible future increases in the mandatory diversion rate. This question of system modification will be the focus of the next franchise system review in three years.

Six of the 22 franchised haulers provide only C&D services. If the five-year notice is given to C&D-only haulers, these franchisees may stop investing in advanced technologies, including state-of-the-art vehicles, because due to their limited service offerings, they would not be able to compete to become an exclusive hauler should a new service delivery model be implemented. The municipal industry trend is toward exclusive systems where C&D is exempted from the system.

BACKGROUND:

Following review by the MSC on April 8, 2014, the City Council reviewed the closed non-exclusive solid waste collection franchise system on April 28, 2014, as codified in Chapter 8.61 of the PMC. The City Council considered recommendations to retain the closed non-exclusive solid waste collection franchise current system and directed the City Manager to place existing franchisees on notice of the City's intent to consider the modification of the current Non-Exclusive Solid Waste Collection Franchise System at the time the five-year notice expires pursuant to California Public Resource Code section 49520, which allows local agencies to grant exclusive operating rights to solid waste disposal companies.

The Zero Waste Strategic Plan identifies policies and programs that Pasadena will need to move towards Zero Waste by 2040. California Assembly Bill 341 effective July 1, 2012, for instance, set a statewide goal of 75% disposal reduction by 2020 and requires all California businesses generating four or more cubic yards each week of commercial solid waste to recycle. Additionally, given the lack of innovative materials processing facilities in the local area, a modification to the existing service arrangement may stimulate the creation of new options as has occurred in other cities. The results of staff's review demonstrated that while Pasadena's current system is effective with an overall 75% recycling diversion rate and should be maintained, it is imperative that the City take steps now to set the stage for future changes in the service arrangement that may be necessary to support City policy directions including the implementation of Zero Waste Pasadena 2040 and recent and anticipated state legislation.

The City Council deferred action on the recommendations and directed staff to update the PMC to address composting haulers and provide additional information on C&D haulers and inert materials. The City Council discussion focused on the desire to involve emerging technologies, such as composters in the franchise system for commercial and residential accounts, to provide additional information on C&D haulers including consideration of a possible separate C&D franchise system, as well as information on inert material and analysis on whether it would be beneficial to broaden the inert definition contained in the current ordinance.

In response, the Department proposes the City Council:

1. Amend Chapters 8.60 ("Solid Waste") and 8.61 ("Solid Waste Collection Franchise System") of the PMC, which now reflects the review of the organics definition as requested by MSC on September 9, 2014, and the resulting addition of definitions for other compostable materials and hauler;
2. Open the Non-Exclusive Solid Waste Collection Franchise System to composting haulers for processing of organic, yard waste, and other compostable material from commercial and residential accounts at state approved/permitted composting facilities;
3. Retain the existing closed Non-Exclusive Solid Waste Collection Franchise System for solid waste and C&D collection; and
4. Notify solid waste and composting haulers of the intent to move to an exclusive system in five years (excludes C&D-only haulers).

Opening Franchise System to Composting Haulers

As reflected in draft Zero Waste Strategic Plan presented to the Environmental Advisory Committee and Municipal Services Committee in August 2013 and based on the results of the 2008 Statewide Waste Characterization Study conducted by CalRecycle, 42% of the Pasadena materials disposed of in landfills are compostable materials. This

demonstrates the tremendous diversion opportunity for compostable materials and the need for the City to encourage such programs. Since technologies and local facilities to process compostable materials are in developmental stages, the City would benefit from opening its waste stream to companies interested in collecting and processing compostable materials.

The Department proposes to open the existing closed franchise system for composting haulers. Franchise applicants would be allowed to collect:

1. Organics – materials that are or were recently living, such as leaves, grass, agricultural crop residues, and/or food scraps;
2. Yard waste – any waste generated from maintenance or alteration of public, commercial or residential landscapes including, but not limited to yard clippings, leaves, tree trimmings, prunings, brush, and weeds; and
3. Other compostable material – any material, confirmed in writing as compostable by a certified processing facility.

New composting haulers would be able to apply for a franchise to collect organics, yard waste, and other compostable materials from commercial and/or residential accounts as soon as Chapters 8.60 and 8.61 of the PMC are amended. Any composting hauler that meets the minimum requirements would be awarded a franchise. The franchise would remain open to composting haulers indefinitely and be evaluated in the next franchise system review in three years.

Construction & Demolition Debris/Material

Construction material is the portion of solid waste generated from a site during or after the construction, renovation, remodeling, repair, deconstruction or demolition of any premise, structure, fence, wall, or paving project. Such materials include inert waste (rock, concrete, brick, sand, soil, ceramics, and cured asphalt), gravel, plaster, gypsum wallboard, aluminum, glass, plastic pipe, roofing material, carpeting and wood.

Six of the 22 franchise haulers (provide solely C&D debris/material service and 15 franchise haulers provide both solid waste and C&D service (see Attachment C). Because there are many haulers for this type of service and the City's franchise haulers consistently meet the required 75% diversion rate for C&D debris, the Department proposes to not open the franchise system to C&D haulers. The FY 2013 C&D diversion rates for the franchise haulers range from 77 to 100% for the 11,303 tons of C&D material collected.

The addition of new haulers is not likely to increase the diversion rate since diversion is based on certified processing facilities' diversion percentage. The nine facilities certified by the City of Los Angeles have 75% or higher diversion percentages. The addition of new haulers may make it more difficult to identify illegal haulers operating within the City resulting in the loss of tonnage data and diversion credit.

It is important to note that Chapter 8.61.040G of the PMC allows any entity to collect inert material, which is clarified later in the report, as long as the firm meets City business license requirements. Based on the tonnages collected by franchised haulers, inert material makes up a large portion of C&D project waste, indicative of a consistent business opportunity for non-franchised haulers. In FY 2013, for example, franchised haulers collected 11,303 tons (88%) of C&D material from projects and 1,567 (12%) tons of inert materials. Given non-franchised haulers provide collection of inert material and do not have to report tonnage to the City, it is likely that the amount of inert material collected in a given year may be comparable to the amount of C&D material.

If the franchise system is opened to C&D haulers, additional support staff may be needed to manage the extra haulers in terms of documentation of tonnage, franchise fee payments, insurance requirements, truck inspections, and conducting audits. Because the system would be open to any hauler that meets minimum requirements, it is unknown how many haulers would be added to the franchise system. Given the nature of the C&D sector, notably that there are many franchised haulers servicing it already and diversion rates are high, the addition of staff resources would likely be without enhanced system performance.

Inert Material Clarification

The City Council requested information about inert material and inquired whether it would be beneficial to broaden the definition contained in the current ordinance. The Department of Public Works determined that no latitude is available as the definition is set by state law.

The City's current definition of inert debris is contained in 14 California Code of Regulations, Section 17381:

"Type A Inert debris includes but is not limited to concrete (including fiberglass or steel reinforcing bar embedded in the concrete), fully cured asphalt, glass, fiberglass, asphalt or fiberglass roofing shingles, brick, slag, ceramics, plaster, clay and clay products. Type A inert debris is waste that does not contain soluble pollutants at concentrations in excess of water quality objectives and has not been treated in order to reduce pollutants."

Assembly Bill 2308, Chapter 993, Statutes of 2002 (Chavez, AB2308) statutorily changed how some inert waste is counted as it relates to diversion from landfills and the State's required recycling diversion goal. This law excludes inert waste (rock, concrete, brick, sand, soil, ceramics, and cured asphalt) sent to CIWMB permitted inert facilities from disposal reporting. Therefore, franchisees do not report such tonnage transported to an inert facility as disposal, but as "wash" material. According to the state, inert material is utilized differently and is waste that does not contain soluble pollutants at concentrations in excess of water quality objectives and has not been treated in order to reduce pollutants, as described by 14 California Code of Regulations, Section 17381. There are approximately nine inert facilities in Los Angeles County. In 2013, seven of

22 franchise haulers reported 1,567 total tons collected of inert material, which was transported to an inert materials processing facility.

Five-Year Exclusive Notification

The Department recommends the following as it relates to the five-year exclusive notification:

1. Issuance of a five-year notice to existing Non-Exclusive Solid Waste Collection Franchise System solid waste haulers and any new composting haulers with the exception of existing C&D-only haulers. While the City may elect not to follow through on a modification in the system, this step will enable the City of Pasadena to be prepared if the adjustment is needed. It is prudent for the City to take steps now to set the stage for future changes in the service arrangement that may be necessary to support City policy directions, including the implementation of the Zero Waste Pasadena 2040, and recent and/or anticipated state legislation including possible future increases in the mandatory diversion rate;
2. Issuance of a five-year notice to any new composting haulers to provide the City with flexibility as the industry matures. Based on current research, with the difficulty of siting, permitting, and high cost of operating organics processing facilities, an exclusive organics franchise may be the most cost-effective way of providing this service in the future, as processors need consistent tonnages to fund and operate facilities; and
3. Exemption of existing C&D-only haulers from the five-year notice because all haulers exceed the mandated diversion requirement and if the five-year notice is issued, these franchisees may stop investing in advanced technologies, including state-of-the-art vehicles because these firms due to their limited service offerings would not be able to compete to become an exclusive hauler should a new service delivery model be implemented. The municipal industry trend is toward exclusive systems where C&D is exempted from the system.

At the next three-year review of the non-exclusive solid waste collection franchise system, the Department of Public Works will provide an analysis of current industry trends and make recommendations on which notifications the City should pursue.

Attachment D contains Proposed Amendments to PMC Chapter 8.60 (“Solid Waste”) and 8.61 (“Solid Waste Collection Franchise System”)

The proposed amendments to PMC Chapter 8.60 (“Solid Waste”) and Chapter 8.61 (“Solid Waste Collection Franchise System”) would reflect the addition of definitions for composting, construction and demolition debris, hauler, inert materials, organics, other compostable material, self-hauler, and yard waste, as well as an exemption to allow composting haulers to pick up organics, yard waste, and other compostable material from residential and commercial properties. Other administrative clean up items include

updates to definitions and procedures to match current practices and clarifying others to match CalRecycle.

The proposed addition of the definition of other compostable materials is responsive to the MSC's request on September 9, 2014, for staff to review the definition of organics. This would broaden the types of materials that composting haulers could pick up from commercial entities including multi-family units, and single family residences. As proposed, composting haulers could pick up organics, defined as materials that are or were recently living (leaves, grass, agricultural crop residues or food scraps), yard waste, and other compostable materials, which is any material, confirmed in writing as compostable by a certified processing facility.

Alternatives to Department of Public Works Proposals

In addition to opening the closed Non-Exclusive Solid Waste Collection Franchise System indefinitely for composting haulers, should the City Council determine that it is in the City's best interest to open the closed Franchise System fully or for solid waste or C&D services specifically, the Department of Public Works recommends the following conditions be considered:

1. Advertise and open Franchise System (or specific component) for two weeks and then close Franchise System (or specific component);
2. Deem applicants that have violated the City's Franchise Ordinance within a three year period automatically ineligible;
3. Require that all vehicles brought into City by new franchises operate on compressed natural gas (CNG) or other alternative fuel regardless of fleet size; and
4. Evaluate feasibility of changing minimum franchise requirements or require monthly administrative fee similar to application fee to discourage businesses from seeking franchises and then not conducting any business.

Another option available to the City Council is to direct the Department of Public Works to retain specialized professional services to conduct an assessment of the City's franchise system. This would be similar to the analyses undertaken by the cities of Los Angeles and San Jose that were included as exhibits in the in the April 28, 2014 Agenda Report.

COUNCIL POLICY CONSIDERATION:

Maintaining a closed Non-Exclusive Solid Waste Collection Franchise System supports the City Council goal to increase conservation and sustainability. It also supports the United Nations Urban Environmental Accords of 2005 Action four of achieving zero waste to landfills and incinerators by 2040. Additionally, it supports the Open Space and Conservation Element of the General Plan by increasing the diversion of waste materials from landfills through the reduction, reuse and recycling of wastes to the highest and best use.

Opening the system to composting haulers will move the City towards Zero Waste Goals. Issuing the five-year exclusive notice for solid waste and proposed new composting haulers will increase City's diversion, reduce traffic pollution, and bring new technologies to the region.

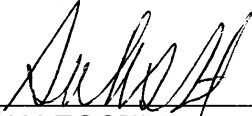
ENVIRONMENTAL ANALYSIS:

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and is exempt per Section 15061 (b) (3). The project is covered by the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

FISCAL IMPACT:

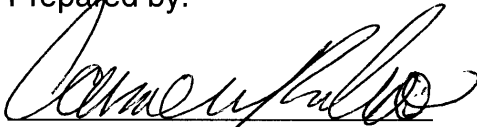
Per chapter 8.61 of the PMC, franchisees are required to remit 23.066% of gross monthly receipts to the City for the preparation and implementation of an integrated waste management plan and the repair and maintenance of the City's infrastructure due to operation of heavy duty solid waste collection vehicles. For FY 2014, estimated franchise fee revenue that went to the Refuse and General Fund is \$3.8 million.

Respectfully submitted,



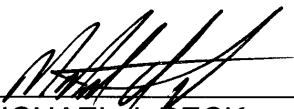
SIOBHAN FOSTER
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Approved by:



MICHAEL J. BECK
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Attachments:

- Attachment A – April 28, 2014, City Council Agenda Report without Attachments and Exhibits (Attachments and Exhibits are Available on City Website)
- Attachment B – Performance of Current Non-Exclusive Solid Waste Collection Franchise System
- Attachment C – 2013 Franchise Hauler Data
- Attachment D – Proposed Amendments to PMC Chapter 8.60 (“Solid Waste”) and 8.61 (“Solid Waste Collection Franchise System”)
- Attachment E – PMC Chapter 8.60 (“Solid Waste”)
- Attachment F – PMC Chapter 8.61 (“Solid Waste Collection Franchise System”)