



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

September 27, 2022  
Agenda Item No. 17

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Micah Martin, Deputy Public Works Director,  
mmartin@newportbeachca.gov

**PHONE:** 949-644-3055

**TITLE:** Ordinance No. 2022-21: Non-Exclusive Commercial Solid Waste  
Franchise Agreements

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**ABSTRACT:**

On August 23, 2022, the City Council adopted Resolution No. 2022-55, declaring its intention to conduct a public hearing on September 27, 2022, to consider granting Non-Exclusive Commercial Solid Waste Franchises to Al Rivera Gardening & Landscape, American Dream Construction Clean-up, Corp. and Key Disposal & Recycling Inc. with an effective date of October 27, 2022, and an expiration date of October 7, 2027. Following a public hearing, the City Council will consider an ordinance granting franchises to these three entities.

**RECOMMENDATION:**

- a) Conduct a Public Hearing to consider the award of Non-Exclusive Commercial Solid Waste Franchises pursuant to Resolution No. 2022-55;
- b) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2022-21, *An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Franchise Agreements for Commercial Solid Waste and Divertible Materials Handling Services Within the City of Newport Beach*, and pass to second reading on October 11, 2022.

**DISCUSSION:**

The City of Newport Beach (City) utilizes a non-exclusive franchise system to manage commercial solid waste collection within the city. This system allows the City to meet the solid wastes collection needs of the business community in a comprehensive manner while still complying with State of California (State) law.

Over the past several years, the State has been making significant changes to its laws regarding the disposal of solid waste, as well as the amount that is required to be diverted away from landfills and recycled or reused (Assembly Bill 939 and 341, Senate Bill 1383).

Newport Beach Municipal Code (NBMC) Section 12.63.030 provides that no person shall provide commercial solid waste handling services or conduct a solid waste enterprise in the City without having first been awarded a franchise and entered into a franchise agreement with the City. At the August 23, 2022 meeting, the City Council passed a Resolution of Intention, Resolution No. 2022-55 (Attachment A), to conduct a public hearing at its September 27, 2022 meeting to consider granting franchises to the three entities listed therein.

At this time, the City Council is conducting the first reading of Ordinance No. 2022-21 (Attachment B) to consider granting the non-exclusive franchises. The second reading is scheduled for October 11, 2022. NBMC Section 12.63.080 allows the City Council to approve or conditionally approve an application for a franchise if, on the basis of the application, information, materials and testimony submitted, the City Council finds that:

- The application complies with NBMC Chapter 12;
- The applicant or any person responsible for the management of the entity submitting the application has not within the past three years: (1) had a franchise for commercial solid waste handling services terminated by the City; and/or (2) operated a solid waste enterprise within the City without a franchise;
- Awarding the franchise is in accord with the objectives of NBMC Chapter 12;
- Granting of such franchise will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the city or be materially detrimental to the public welfare or injurious to property or public improvements; and
- The applicant has sufficient experience, equipment or recycling plan to safely comply with the requirements of the franchise agreement.

Staff has received and reviewed the franchise applications from the entities listed in Resolution 2022-55: Al Rivera Gardening & Landscape, American Dream Construction Clean-up, Corp. and Key Disposal & Recycling Inc. Based on staff's review, the submitted applications meet all criteria required under NBMC 12.63.080.

The new Non-Exclusive Commercial Solid Waste Franchises will take effect 30 days after the proposed adoption of the ordinance with an effective date of October 27, 2022, contingent on the execution of the individual franchise agreements, and approval of each firm's required insurance and bonds.

**FISCAL IMPACT:**

Companies (Franchisees) that are approved and granted a 2020 Non-Exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services within the City are required to pay a franchise fee to the City which is equal to a total of sixteen percent (16%) of the gross receipts for all commercial franchise services provided by Franchisee in the City.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Resolution No. 2022-55  
Attachment B – Ordinance No. 2022-21