



# NEWPORT BEACH

## City Council Staff Report

March 26, 2024  
Agenda Item No. 9

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

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**TITLE:** Ordinance No. 2024-7: Terminating Two Non-Exclusive Franchise Agreements for Commercial Solid Waste

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### **ABSTRACT:**

On March 8, 2024, the City of Newport Beach issued Haul-Away Rubbish Service Co. and Key Disposal & Recycling, Inc. notices of intent to terminate their non-exclusive franchises. Pursuant to Newport Beach Municipal Code (NBMC) Section 12.63.140., the notice of intent informed both haulers of the City's intention to hold a hearing on March 26, 2024, at 5:00 p.m., or soon thereafter as the matter shall be heard.

### **RECOMMENDATIONS:**

- a) Conduct a hearing to consider the termination of the Non-Exclusive Commercial Solid Waste Franchise Agreement with Haul-Away Rubbish Service Co. and Key Disposal & Recycling, Inc;
- 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. 2024-7, *An Ordinance of the City Council of the City of Newport Beach, California, Terminating Two Non-Exclusive Franchise Agreements for Commercial Solid Waste*, and pass to second reading on April 9, 2024.

### **DISCUSSION:**

The City utilizes a non-exclusive commercial franchise waste hauling system for the collection of municipal solid waste (MSW), recyclables, organic waste and construction and demolition (C&D) debris. On October 22, 2019, the City Council approved a model agreement amending the Non-Exclusive Commercial Solid Waste Franchise Agreement (2020 Franchise Agreement) to include explicit State diversion compliance requirements and revised insurance requirements for franchisees.

As of March 26, 2024, there are 22 commercial waste haulers authorized to operate within Newport Beach under the 2020 Franchise Agreement. Prospective hauling firms undergo a rigorous review and approval process to become franchise haulers. Once approved, franchise haulers can provide fixed route and/or temporary waste collection and diversion services to clients within the City. Franchise haulers are also subject to ongoing reviews by City staff for 2020 Franchise Agreement compliance.

Moreover, CalRecycle, the State agency responsible for managing statewide recycling and waste management programs, has placed Newport Beach under a Corrective Action Plan (CAP) due to deficiencies in meeting waste diversion requirements established by Assembly Bill (AB) 341, AB 1826 and Senate Bill (SB) 1383 – all legislative pieces intended to establish and meet statewide waste diversion targets for organics, green waste and food scraps, as well as recyclable waste. Under the CAP, the City is required to demonstrate “significant progress” in meeting the waste diversion requirements established by the legislation.

***Justification for Termination of Haul-Away Rubbish Service Co.***

Haul-Away Rubbish Service Co. failed to comply with 15 terms of the 2020 Franchise Agreement and failed to rectify these deficiencies. Haul-Away Rubbish Service Co. also failed to render City-requested deliverables during the period allotted by the Notice of Default (Attachment B) issued on December 7, 2023. Haul-Away Rubbish Service Co. then failed to appeal the Notice of Default within 10 days of issuance, which is allotted per Section 23.C of the 2020 Franchise Agreement. Furthermore, upon the City’s submission of the Notice of Default to Haul-Away Rubbish Service Co. on December 7, 2023, the firm informed staff on December 11, 2023, via email, that it was sub-contracting two of its accounts to another waste hauler, Universal Waste Systems, which is a violation of Section 26 of the 2020 Franchise Agreement.

On March 8, 2024, the City issued a Notice of Intent to Terminate to Haul-Away Rubbish Service Co. (Attachment D). The notice informed the contractor of a hearing scheduled for March 26, 2024, concerning the termination of its franchise agreement, pursuant to NBMC Section 12.63.140.

***Justification for Termination of Key Disposal & Recycling, Inc.***

Key Disposal & Recycling, Inc. failed to comply with 10 terms of the 2020 Franchise Agreement and render City-requested deliverables during the period allotted by the Notice of Default (Attachment C) issued on February 26, 2024. Key Disposal & Recycling, Inc. attempted to cure default, but either did not supply what was asked or did not supply sufficient response to four of the seven items listed in the Notice of Default:

1. Provide:
  - a. A source separation implementation plan that includes a summary of outreach efforts to the generator through February 13, 2024;
  - b. A list of efforts made in calendar year 2023 to divert collected material from landfills; and
  - c. A documented approach to implementation from February 14, 2024 going forward.

2. Provide results of:
  - a. On-site load checks;
  - b. Route reviews; and
  - c. Waste characterizations for reported generator for calendar year 2023.
3. Provide City with completed Franchise Agreement Exhibit E document (Franchise Agreement implementation tracking attachment) for serviced account.
4. Provide updated insurance information that meets requirements set forth in the Franchise Agreement Exhibit D.

Three of the seven items were resolved:

- 1) Provide City with updated business license information.
- 2) Provide City with updated fleet list and collision avoidance information for vehicles utilized in City, including organic material collection vehicle.
- 3) Provide route information and maps per waste stream.

Key Disposal & Recycling, Inc. failed to appeal the Notice of Default (Attachment C) within 10 days of issuance, which is allotted per Section 23.C of the 2020 Franchise Agreement.

On March 8, 2024, the City issued a Notice of Intent to Terminate (Attachment E) to Key Disposal & Recycling, Inc. The notice informed the contractor of a hearing scheduled on March 26, 2024, concerning the termination of its franchise agreement, pursuant to NBMC Section 12.63.140.

### ***Request of City Council***

Staff requests that the City Council open the hearing to consider the terminations of Haul-Away Rubbish Service Co., and Key Disposal & Recycling, Inc. from the 2020 Franchise Agreement. At the conclusion of the hearing, City Council is asked to approve the first reading of Ordinance No. 2024-7 (Attachment A) to consider terminating two non-exclusive franchise agreements. The second reading is scheduled for April 9, 2024.

### **FISCAL IMPACT:**

Both haulers each represent a single account and nominal revenue loss is anticipated.

### **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 – Ordinance No. 2024-7

Attachment B – Notice of Default – Haul-Away Rubbish Service Co.

Attachment C – Notice of Default – Key Disposal & Recycling, Inc.

Attachment D – Notice of Intent to Terminate Haul-Away Rubbish Service Co.

Attachment E – Notice of Intent to Terminate Key Disposal & Recycling, Inc.

Attachment F – Franchise Agreement with Haul-Away Rubbish Service Co.

Attachment G – Franchise Agreement with Key Disposal & Recycling, Inc.