



NEWPORT BEACH

City Council Staff Report

May 14, 2024
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2024-14: Terminating a Non-Exclusive Franchise Agreement for Commercial Solid Waste

ABSTRACT:

The City of Newport Beach has been working to gain compliance with the terms of the Non-Exclusive Commercial Solid Waste Franchise Agreement (2020 Franchise Agreement) with Key Disposal & Recycling, Inc. (Key Disposal) since its execution in August 2023. The City issued a Notice of Default of the 2020 Franchise Agreement in February to resolve the violations. Since the violations were not resolved, the City issued Key Disposal a Notice of Intent to Terminate the 2020 Franchise Agreement on March 8, 2024, pursuant to Newport Beach Municipal Code (NBMC) Section 12.63.140, with a hearing to be held on March 26, 2024. At the March 26, 2024 meeting, the hearing was continued to April 9, 2024 (and again to May 14, 2024) to provide Key Disposal with additional time to comply. Key Disposal has been unable to fulfill the outstanding requirements. As a result, staff recommends termination of Key Disposal's 2020 Franchise Agreement.

RECOMMENDATIONS:

- a) Conduct a hearing to consider the termination of the Non-Exclusive Commercial Solid Waste Franchise Agreement with 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. 2024-14, *An Ordinance of the City Council of the City of Newport Beach, California, Terminating a Non-Exclusive Franchise Agreement for Commercial Solid Waste*, and pass to second reading on May 28, 2024.

DISCUSSION:

The City utilizes the 2020 Franchise Agreement to allow waste haulers to collect municipal solid waste, recyclables, organic waste, and construction and demolition debris at non-residential properties throughout the City. The 2020 Franchise Agreement incorporates a number of State mandates as well as standard contract provisions. Some examples include diversion compliance and insurance.

As of March 26, 2024, there were 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.

Violations of 2020 Franchise Agreement as of the March 26, 2024, City Council Hearing

Key Disposal failed to comply with terms of the 2020 Franchise Agreement on 10 occasions. Of the 10 violations, three pertain to late reporting, although reports were eventually submitted. The other violations relate to the failure to deliver seven items required under the 2020 Franchise Agreement, including:

- 1) A comprehensive source separation implementation plan which details how recyclable and non-recyclable material will be sorted when discarded at the customer’s place of business in accordance with Sections 6(A), 12(A), 13(A), 13(C), and 16 of the agreement. A source separation implementation plan should also summarize customer outreach efforts made by the franchise hauler.
- 2) Results of on-site load checks, route reviews and waste characterizations of the customer’s waste stream to ensure compliance with Sections 6(F) and 7(E). These measures are intended to “double-check” whether the source separation is effective.
- 3) The franchise hauler’s contact tracking with the customer (Exhibit E) to ensure adequate efforts are made by the franchise hauler to gain compliance by the customer.
- 4) Updated business license information in accordance with 2020 Franchise Agreement application requirements and Section 27(K).
- 5) Updated insurance information that meets requirements set forth in Exhibit D of the 2020 Franchise Agreement.
- 6) Updated fleet list and collision avoidance information for vehicles utilized in the City, including an organic material collection vehicle in accordance with Section 18.
- 7) Route information and maps per waste stream as required by CalRecycle.

Key Disposal advised the City that it would cure the default, but was only able to cure Items 4, 6, and 7. Four deliverables were not supplied, thus not sufficiently curing default. Key Disposal failed to appeal the Notice of Default (Attachment B) within 10 days of issuance, which is allowed per Section 23.C of the 2020 Franchise Agreement.

On March 8, 2024, the City issued a Notice of Intent to Terminate (Attachment C) to Key Disposal. The notice informed Key Disposal of a hearing to be held on March 26, 2024, to consider termination of its 2020 Franchise Agreement pursuant to NBMC Section 12.63.140.

The City Council granted a time extension, providing Key Disposal until April 9, 2024, to comply. The City and Key Disposal believed additional time was needed for compliance and on April 9, 2024, City staff asked to instead return to the Council on May 14, 2024. The request was approved by the City Council.

Compliance Efforts Following the March 26, 2024, City Council Meeting

On Monday, April 1, 2024, City representatives met with Key Disposal to discuss compliance with the 2020 Franchise Agreement. Key Disposal and the City agreed to the following task list:

- Task 1 – By April 5, 2024, identify a mixed-waste recovery facility for utilization until the end of calendar year 2024.
- Task 2 – Conduct a waste characterization audit and supply report.
- Task 3 – Document outreach.
- Task 4 – Develop an implementation plan to place external source separated containers and to assist the commercial business with internal source separation.
- Task 5 – Submit Exhibit E Report.

The aforementioned tasks were intended to gain compliance with fundamental terms of the 2020 Franchise Agreement. Namely, Section 6 (Diversion and Disposal of Municipal Solid Waste, Recyclable Materials, Food Scrap and Green Waste), Section 8 (Franchisee's Application; Records; Audits), Section 12 (AB 341 Recycling Program for Commercial Premises and Multifamily Dwellings), Section 13 (AB 1826 Food Scrap Diversion Program for Commercial Premises), Section 14 (AB 1826 Commercial and Multifamily Green Waste and Wood Waste Collection Program) and Exhibit E. Key Disposal identified a mixed-waste recovery facility for waste diversion in the timeline specified. The City approved the selection and deemed Task 1 complete.

Key Disposal conducted a waste characterization audit at its facility, located at 5202 Industry Avenue in Pico Rivera, on April 11, 2024. City representatives were present to monitor the audit. The compactor contents, which up to this date were typically just sent to the landfill, consisted mainly of divertible/recyclable material which does not comply with Section 6 of the 2020 Franchise Agreement. Key Disposal was to supply a report that included:

- 1) The date and time the material was collected
- 2) The location and name of the inspection facility
- 3) Images from the waste inspection that included any contamination and the transported container
- 4) The waste characterization
- 5) Weight tickets from the selected material recovery facility

The City did not receive an update or report from Key Disposal and therefore emailed the waste hauler on April 17, 2024, to remind its staff that the report was due and what it should include. Key Disposal acknowledged its staff was working on the report. As of April 24, 2024, the City had not received an update or response from Key Disposal and requested report submission. Due to the limited communication from Key Disposal, the City also set a revised deadline for the remaining deliverables of Friday, April 26, 2024. On April 24, 2024, Key Disposal submitted a report that omitted the location and name of the inspection facility and images from the waste inspection. Additionally, the waste characterization results supplied by Key Disposal varied significantly from those of the City's monitors. City staff asked Key Disposal to update and resubmit the report with the remaining deliverables.

As of the end of business, Friday, April 26, 2024, Key Disposal submitted its response to address Tasks 2 through 5. The City reviewed the responses and deemed Tasks 2 and 5 as complete and Tasks 3 and 4 as incomplete. Due to inconsistent communication with and information supplied by Key Disposal, City staff communicated with a representative from Key Disposal's single client, the Logistics and Fulfillment Supervisor, on Monday, April 29, 2024, for verification. City staff confirmed that educational material was not supplied to store personnel, a scheduled walkthrough with store personnel did not transpire, and implementation attempts were not made.

Staff has spent considerable time and effort working with Key Disposal to obtain compliance with the fundamental terms of the 2020 Franchise Agreement. Yet, two of the tasks that would help ensure waste diversion requirements mandated by State law are being met are still not complete. Considering that the 2020 Franchise Agreement clearly states ongoing hauler requirements and implementation expectations, in conjunction with the number of ongoing compliance issues with Key Disposal & Recycling, Inc., staff recommends termination of the 2020 Franchise Agreement.

FISCAL IMPACT:

This franchise hauler currently represents a single account, which will most likely be picked up by one of the other franchise commercial haulers. 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. 2024-14
- Attachment B – Notice of Default
- Attachment C – Notice of Intent to Terminate
- Attachment D – Franchise Agreement