



NEWPORT BEACH

City Council Staff Report

May 28, 2024
Agenda Item No. 18

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 with Key Disposal & Recycling, Inc. (Key Disposal) since its execution in August 2023. The City issued a Notice of Default of the Franchise Agreement in February 2024 to resolve the violations. Since the violations were not resolved, the City issued Key Disposal a Notice of Intent to Terminate its 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 did not fulfill the outstanding requirements. At the May 14, 2024 meeting, staff recommended termination of Key Disposal's Franchise Agreement. At the City Council's suggestion, Key Disposal was provided the option of voluntarily relinquishing its Tier 1 franchise, and retain their Tier 2 franchise, rather than continue with the formal termination. After the meeting, staff requested written confirmation of relinquishment. As of Tuesday, May 21, 2024, Key Disposal has not voluntarily relinquished its franchise, nor did Key Disposal supply a signed amendment to only allow Tier 2 service, as offered by the City.

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* in its entirety, and pass to second reading on June 11, 2024.

DISCUSSION:

The City utilizes a Franchise Agreement (2020 version) to allow waste haulers to collect municipal solid waste, recyclables, organic waste, and construction and demolition debris at non-residential properties throughout the city. This 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 a City Commercial Franchise Agreement for Solid Waste collection and hauling. 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 City 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.

With regard to the Non-Exclusive Commercial Solid Waste Franchise Agreement with Key Disposal, the City has been working with the hauler to gain compliance with the terms of its City Franchise Agreement since its execution in August 2023. Key Disposal failed to comply with terms of the Franchise Agreement on 10 occasions. Of the 10 violations, three pertained to late reporting, although reports were eventually submitted. The other violations relate to the failure to deliver seven items required under the 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 three of the seven items (Items 4, 6, and 7). Therefore, the default was not cured. Key Disposal failed to appeal the Notice of Default (Attachment B) within 10 days of issuance, as allowed per Section 23.C of the 2020 Franchise Agreement. The City issued a Notice of Default of the Franchise Agreement in February 2024 to resolve the violations. After much effort and since the violations were still not resolved, the City issued Key Disposal a Notice of Intent to Terminate its 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 City Council granted a time extension, providing Key Disposal until [April 9, 2024](#), to comply. The City and Key Disposal believed additional time was still 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 Between March 26, 2024 and May 14, 2024, City Council meetings.

On Monday, April 1, 2024, City representatives met with Key Disposal to discuss compliance with its City 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 City 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.

At the City's direction, 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 follow-up waste characterization 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 in the transported container
- 4) The waste characterization
- 5) Weight tickets from the selected material recovery facility

The City did not receive an update or waste characterization report from Key Disposal and therefore emailed the waste hauler on April 17, 2024, to remind its staff that the waste characterization report was due and what it should include. Key Disposal acknowledged its staff was working on the report. As of 11:06 am April 24, 2024, the City had not received an update or response from Key Disposal and requested the waste characterization report submission by end of day. Due to the limited communication from Key Disposal, the City also set a revised deadline for the remaining deliverables of Friday, April 26, 2024. By end of business April 24, 2024, Key Disposal submitted a waste characterization 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 waste characterization report with the remaining deliverables by end of business, April 26, 2024.

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 still incomplete. Due to inconsistent communication with and information supplied by Key Disposal, City staff communicated with a representative from Key Disposal's single Newport Beach 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. Key Disposal continued to submit documentation after the deadline. Two items were not complete as of May 14, 2024, and to verify documentation and narrative supplied by Key Disposal, City staff called the store representative. Store personnel confirmed that Key Disposal inquired about placing source separation stickers on internal containers, but did not recommend having an external recycling bin near the compactor.

Key Disposal did not fulfill the outstanding requirements so at the May 14, 2024 City Council meeting, staff's findings were presented to the Council and staff recommended termination of Key Disposal's Franchise Agreement. As part of the item discussion, City Council presented Key Disposal with two options:

- 1) Key Disposal could voluntarily relinquish the Tier 1 (fixed route) component of its franchise, or
- 2) Key Disposal's franchise agreement could continue with the formal termination process.

Staff reached out to Key Disposal after the meeting and requested written confirmation of its voluntary relinquishment of its Tier 1 franchise component and that once received, an amended franchise agreement limiting operating authority to Tier 2 service would be provided. Staff provided Key Disposal with a deadline of 12 p.m. on May 16, 2024, and allowed for voluntarily relinquishment of the entire franchise with the option of amending its current franchise to only a Tier 2 hauler. Key Disposal did not provide its selection within the timeline allotted. After the deadline, on May 17, 2024, City staff again reached out to Key Disposal and provided a copy of the amended franchise agreement permitting only Tier 2 service in the city and requested two fully executed copies to be submitted by the end of business on Monday, May 20, 2024. Key Disposal was also provided an alternative to fully executing the amended franchise; written notice signed by an officer of the company fully relinquishing the existing franchise agreement. Key Disposal responded that its counsel was reviewing the options. As of the end of day May 20, 2024, Key Disposal had not provided a response. Staff now recommends termination of the entire City Commercial Solid Waste Franchise with Key Disposal.

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
- Attachment E – Correspondence