

PUBLIC HEARING NOTICE

RESOLUTION NO. 2025-6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DECLARING ITS INTENTION TO CONDUCT A PUBLIC HEARING TO CONSIDER GRANTING NON-EXCLUSIVE COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING FRANCHISES

WHEREAS, the City Council of the City of Newport Beach (“City”) finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris, and all other materials that can be diverted from landfill disposal (collectively “Commercial Solid Waste”) generated within the City is a vital public service;

WHEREAS, the City Council further finds and determines that the collection, transportation, storage, and disposal of municipal solid waste and the collection, transportation, processing, and diversion of processable municipal solid waste and divertible materials (“Commercial Franchise Services”) is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties, and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

WHEREAS, the non-exclusive franchises for the use of public streets to provide Commercial Franchise Services promotes the public health, safety and welfare by providing permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

WHEREAS, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with state law (“2020 Franchise”), which expires in the year 2027;

WHEREAS, the City has received applications from: (1) BC Hauling & Demolition, Inc.; (2) California Waste Services LLC, and (3) Greenleaf Engineering (collectively, “Proposed Grantees”), who wish to perform work under the 2020 Franchise;

WHEREAS, pursuant to Article XIII (Franchises) of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code (“NBMC”), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

WHEREAS, pursuant to City Charter Section 1301 (Resolution of Intention. Notice and Public Hearing), the City Council, prior to granting any franchise, shall pass a resolution declaring its intention to grant a franchise, stating the name of the proposed grantee(s), the character of the franchise, and the terms and conditions upon which it is proposed to be granted; and

WHEREAS, such resolution shall fix and set forth the day, hour and place when and where any persons having any interest therein or any objection to the granting thereof may appear before the City Council and be heard thereon.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council does hereby declare its intention to grant non-exclusive franchises, subject to the following general terms and conditions (“Non-Exclusive Franchise”):

- a. Effective date. March 27, 2025;
- b. Franchise fees. Sixteen percent (16%) of gross monthly receipts. Five and one-half percent (5.5%), shall be earmarked for the purposes of indemnifying and holding the City harmless from environmental liability associated with the franchisee’s operations in the City. This portion of the franchise fee shall be paid into the City’s Environmental Liability Fund. One-half percent (0.5%) shall be attributable to the maintenance and implementation of the City’s Source Reduction and Recycling Element;
- c. Term. March 27, 2025, to October 7, 2027;
- d. Rates. The City shall not set franchisee’s bin rates;
- e. Indemnification. Franchisee shall indemnify and hold City harmless from penalties and damages for failure to meet state recycling requirements with respect to the portion of the Commercial Solid Waste stream collected by franchisee;
- f. Diversion requirements. Franchisee shall divert the minimum amounts required by state law, of all processable municipal solid waste, recyclable materials, food scraps, green waste, and construction and demolition debris collected by commercial franchisee;
- g. Disposal requirements. Franchisee shall dispose of Commercial Solid Waste, not otherwise diverted, in Orange County landfills pursuant to the City’s waste disposal agreement with the County of Orange. City maintains the right to designate disposal facilities to be used by franchisee;
- h. Billing. Franchisee shall be responsible for all billing and collection for its accounts;
- i. Termination. A Franchise may be terminated pursuant to Section 12.63.140 (Solid Waste Management - Termination) of the NBMC if the Council finds that franchisee has failed to comply with, or to do anything required of the franchisee by Chapter 12.63 (Solid Waste Management) of the NBMC; has violated any provision of the ordinance granting the franchise; has violated any provision of the 2020 Franchise or any federal, state or local law or regulation applicable to franchisee’s operations under the franchise; or if any provision of Chapter 12.63 (Solid Waste Management) of the NBMC or the 2020 Franchise is repealed or becomes or is declared to be invalid, and the City Council expressly finds that such provision constitutes a material consideration to the granting or continuation of such Non-Exclusive Franchise;

j. Application requirements. Prior to obtaining the 2020 Franchise, franchisee shall designate the specific Commercial Franchise Services for which it desires to apply and shall demonstrate competence in and compliance with the City's insurance, equipment, and diversion requirements with respect to those Commercial Franchise Services;

k. Public education. Franchisee shall meet City's requirements to implement recycling, diversion, and source reduction public education activities;

l. Recycling/diversion programs. Franchisee shall implement and provide recycling and diversion programs for all customers subject to California State Assembly Bills 939, 341, and 1826, Senate Bill 1383, and the California Green Building Standards Code, codified in the California Code of Regulations Title 24, Part 11 ("CALGreen");

m. Hauler representative. Franchisee shall designate a representative to assist in implementing State-imposed recycling and diversion programs; and

n. Compliance. Franchisee shall comply with all state, federal laws and regulations, terms and conditions of the 2020 Franchise, the City Charter and the NBMC.

Section 2: The City intends to grant the 2020 Franchise to the following entities:

- a. BC Hauling & Demolition, Inc.
- b. California Waste Services LLC
- c. Greenleaf Engineering

Section 3: The City Council shall conduct a public hearing on February 11, 2025, at 4:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to consider granting the Proposed Grantees the 2020 Franchise. Persons who have an interest in or objection to the granting of the 2020 Franchise to the Proposed Grantees may appear before the City Council and be heard at that date and time.

Section 4: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15301 and 15308 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the resolution does not change nor expand existing solid waste operations and facilities within the City. This resolution is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, Senate Bill 1383 and The California Solid Waste Management Act, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

Section 5: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 6: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

Section 8: Pursuant to City Charter Section 1301, this resolution shall be published in the City's official newspaper within fifteen (15) days of its adoption and at least ten (10) days prior to February 11, 2025.

ADOPTED this 28th day of January, 2025.

/s/ Joe Stapleton, Mayor

ATTEST: /s/ Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

/s/ Aaron C. Harp, City Attorney

Attachment: 2020 Non-Exclusive Commercial Franchise Agreement Sample

[viewable at:

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3096808&dbid=0&repo=CNB>

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