



To: SWAC Hauler Subcommittee

From: Bob Gedert, Director
Solid Waste Services (SWS) Department

Date: July 13, 2010

Subject: **Staff Findings Report - Hauler License Fee Ordinance**

The purpose of this memo is to provide staff findings and recommendations on the Hauler License Fee Ordinance

Background

In the early 1990's a Hauler Subcommittee was formed to establish a Hauler License Fee Ordinance for the City of Austin. The intent of the ordinance was to establish a fair playing field for private haulers by requiring a permit for all haulers who do business within the City limits. As time progressed, some haulers either did not know about the ordinance or made a decision to not pay the fee due to of a lack of enforcement of the ordinance.

In 2008, the Solid Waste Services Department (SWS) attempted to overhaul the ordinance and change it's usage into a Hauler Franchise Fee. The SWS and Legal Departments began holding stakeholder meetings to gauge public opinion on the matter and answer questions. The stakeholders were not in favor of a Franchise Fee and the Solid Waste Advisory Commission (SWAC) passed a resolution on September 10, 2008 in opposition of the fee. Through the resolution the Commission asked staff to draft an alternative ordinance focused on a non-franchise fee related funding mechanism.

Since this time staff has worked with SWAC and stakeholders to draft a new ordinance that will be satisfactory to the private haulers, with a focus on enforcement against rogue haulers not permitted to drive the City streets. After many meetings, no resolution has been reached between staff, SWAC and the stakeholders.

Staff Findings

The private haulers major concern is the lack of enforcement of the current ordinance against rogue haulers that may be driving unsafe loads and not properly license with the State as well as not carrying the City permit. Violators to the ordinance as defined by the haulers are the "fly-by-night" (rogue) haulers with no registrations at all (state or otherwise). Currently the City utilizes the Code Compliance Department (CCD) to enforce the ordinance, but due to low staff and the lack of police powers to arrest, enforcement is not possible for CCD to catch all the violators.

Staff reviewed the ordinance in detail to address hauler identified enforcement concerns. The proposal for the enforcement plan consisted of the CCD enforcement of the ordinance by stopping haulers who appear to be hauling unsafe loads and do not display the appropriate licensed decal. In addition, the stopped driver would be asked about proper insurance documentation on the highways. The significant problem with this proposal is that CCD does not have the authority to stop moving vehicles.

An alternative was to pay police officers overtime to enforce the ordinance. The private haulers vehemently objected to CCD paying police officers overtime to enforce this ordinance. They also felt it did not accomplish the goal of catching the “fly-by-night” rogue haulers who were not registered. It would only further penalize those haulers who were abiding by the appropriate state insurance and highway regulations through unnecessary stops and paperwork review.

Beefing up enforcement provisions the current ordinance above and beyond existing statutes raises the issue of jurisdictional policing authority and resource dedication. Current state statutes allow for policing entities to stop hauling vehicles that appear to have unsafe loads, check for proper insurance documentation, and check for proper State license. In essence, further City enforcement measures are a duplication of existing services already provided through all levels of law enforcement (e.g. State, County and City). There may be a perception of lax enforcement of current statutes, but one more overlapping regulatory restriction would not address that issue.

Options

The City has three options to consider regarding this ordinance.

1. Revise the ordinance and incorporate a new enforcement portion including adding additional resources. This option presumes adding dedicated enforcement officers through Austin Police Department. The primary concern on this option is that current State laws authorize policing agents to perform this activity, regardless of any revisions to a City ordinance, yet enforcement is difficult to maintain and sometimes perceived by legitimate haulers as an unfair layer of government bureaucracy.
2. Leave the ordinance as is and ensure existing staff and resources are dedicated to the enforcement portion to the ordinance, which currently does not exist. The primary concern on this option is the lack of SWS and CCD policing powers, as well as the lack of nexus to the mission of the SWS Department. Adding regulatory powers to the SWS Department does not advance the mission of the Department Zero Waste goals.
3. Repeal the ordinance and the fee collection associated with this function. The primary reason for elimination of the ordinance would be the lack of universal stakeholder support for further enforcement measures, the difficulty in crafting a fair financial support system for enforcement, and the duplicity of existing State Code and Laws. The primary concern regarding exercising this option is the continuation of rogue haulers on City streets without adequate enforcement with existing structures in place.

Staff Recommendations

SWS Staff recommends eliminating the existing Hauler Fee ordinance (Option 3) because it duplicates enforcement services already provided by the Austin Police Department and the Texas Department of Public Safety. Neither the Hauler Fee ordinance as it exists, nor as proposed through revisions, fulfills the requirements and needs of the stakeholders, based on recent

discussions with the haulers in SWAC Subcommittee discussions. In addition, the increased enforcement components do not propel the mission of the SWS Department toward Zero Waste and would be a drain on existing resources.

The staff also recommends continued dialogue between interested haulers with existing enforcement agencies to better identify rogue hauler issues and encourage stronger officer enforcement through current law enforcement provisions.

If you have any additional questions, please contact me at 512-974-1926.