

## **Business Impact Statement – License Fee for Specific Businesses**

### **Subject:**

Addition of Section 5.20.050 to the Sparks Municipal Code

License Fees for Specific Businesses:

Solid Waste Container Rental and Hauling of Solid Waste(s) or Recyclable Materials

### **Background:**

Over the course of multiple meetings in 2007/2008, the City of Sparks negotiated a new franchise agreement for the hauling of Garbage and Residential Curbside Recyclable Materials with Sparks Sanitation and RSW Recycling, companies owned and operated by Waste Management (approved in December, 2008). In the course of discussion surrounding the adoption of the new agreement, businesses located within the City of Sparks as well as competitors to the franchisee encouraged the City to consider an open-market model for commercial and industrial trash services. This argument and the desire for more competition where possible were supported by the City Council.

However, the reduction of scope in the new franchise agreement resulted in a loss of franchise revenues to the City of Sparks. Throughout the discussion of the issue in 2007/2008, the City Council directed that franchise revenues lost under any new agreement should be recouped from those companies that would benefit by the opening of the franchise to competition. The proposed ordinance that initiates the need for this report attempts to do that.

The adoption of this ordinance will add new language to the Sparks Municipal Code under Chapter 5.20 that allows for the assessment of specific fees to certain classifications of business. Currently this section calls out 4 different types of businesses that are assessed business license fees that vary from the fee schedule used for the majority of businesses in the City of Sparks. Passage of this ordinance would add a 5<sup>th</sup> business type as detailed in the proposed language (“**Attachment A**” in this Report).

### **Process (Business Impact Statement is Required):**

Nevada Revised Statutes (NRS) Chapter 237 defines a detailed process for the adoption of new rules that affect businesses. In this case, the City of Sparks is proposing a “rule” defined in NRS 237.060(b) as, “an action taken by the governing body of a local government that imposes, increases or changes the basis for the calculation of a fee that is paid in whole or in substantial part by businesses.”

The proposed addition to the Sparks Municipal Code meets this definition. Therefore, the City has worked to meet the requirements of notification specifically defined in NRS 237.080. Comments from potentially affected businesses were solicited and received (as detailed below). Based on the comments and the belief that the new rule will impose a “direct and significant economic burden upon a business”, the City has prepared this “Business Impact Statement” as required by NRS 237.080 (Sub-section 5). By law, this report must be available for public inspection at the time the item is posted. Therefore the report will be included in every staff report supporting consideration of the ordinance.

**The following issues/questions are provided as required by NRS 237.090:**

**NRS 237.090 (ITEM 1-a)**

**Describe the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary:**

The City of Sparks compiled a list of potentially affected businesses from a variety of lists including current business license holders, listings provided by the Washoe County Health District and listings found in the local phone book. A total of 28 businesses in the region were identified as potentially meeting the requirements defined in the proposed ordinance. A full list of solicited vendors is included in this report as **“Attachment B.”**

On March 6, 2009, each business on this list was mailed a cover letter and a copy of an early draft of the ordinance. That letter is included as **“Attachment C.”** Businesses were encouraged to read the proposed ordinance and provide written comment back to the City of Sparks by March 30, 2009. Comments received as late as April 6, 2009 are included in this report. Those interested in obtaining a copy of this summary may find it within this Business Impact Statement which will be included within the staff report supporting the City Council consideration of the ordinance (Scheduled for April 27, 2009 and May 11, 2009).

Although written comments were requested, notes were made when calls were received on the subject. The City received the following comments summarized here:

**Earth First Recycling, Inc. (Phone Call):** This business inquired about their specific business niche with regard to their recycling services. In their case, it was represented that they do not charge waste generators for the rental of containers, but provide them free of charge. In periods where there is a return on recycled goods, money received from the recycled goods is then shared with the generator.

*City of Sparks Response:* As represented, this type of business operation would not be subject to the proposed ordinance as it does not include the rental and servicing of containers. This issue was further addressed in the “final” draft of the ordinance (Section F-2 of draft ordinance) that will be considered by the City Council.

**Tom’s Hauling & Cleanup (Phone Call):** This business inquired as to the applicability of this ordinance on their business model. In this case, it was represented that the business owner used a privately owned vehicle to do small hauling jobs. His service does not include the rental or servicing of containers.

*City of Sparks Response:* As represented, this type of business operation would not be subject to the proposed ordinance as it does not include the rental and servicing of containers.

**Empire Waste Systems (Letter - Included as “Attachment D”):** The letter included 5 comments itemized and answered here:

1. Hauler should also provide proof of Washoe County Health Dept. permit, allowing Company to haul within Washoe County. Currently, not all trash haulers have this permit.

***City of Sparks Response:*** This item was added in the “final” draft of the ordinance that will be considered by the City Council (Section M of draft ordinance).

2. Clarify, if the proposed fee would also be assessed on Recyclable Materials?

***City of Sparks Response:*** Yes. In cases where the business rented and serviced containers, the ultimate disposition of those materials is irrelevant.

3. Clarify, if the proposed fee would also be assessed on demurrage (rental) fees, fuel surcharges, or other misc additional charges, in addition to the cost of the box/service?

***City of Sparks Response:*** Yes. The fee is to be assessed against the “total gross receipts” of the business and that would include the items listed.

4. The 75% “primary purpose” of their business may be too high of a percentage. How are you going to verify that?

***City of Sparks Response:*** As with other business license fees, the City relies (to a degree) on the honor of the business applying for the license. Spot audits occur at the time of application and renewal and cases of obvious misstatements or poor accounting will be investigated. The percentage was arrived at to set a high bar for the applicability of the higher fee as well as to set a benchmark where an affected business would be easily able to determine which business license rate would be applicable to their operation.

5. Maybe the City needs to issue a separate license classification even to those companies who may already have a license for additional activities, such as a contractor. If that contractor or other occupation, decides that they also will be hauling trash, then they need 2 separate business licenses from City of Sparks. One for contracting and one for the trash hauling, regardless of what % of their business is derived from trash hauling.

Empire would favor a separate permit for trash hauling, regardless of the size, gross revenues, etc of the company. All companies with that permit would be subject to the same City imposed fee (whatever that % becomes). Possibly, then if gross revenues exceed X amount, then payments must be made quarterly, then X amount bi annual, X amount yearly, something to that effect.

***City of Sparks Response:*** The City does not wish to establish a multi-tier licensing system for this or any other business classification. The proposed ordinance does not seek to assess this fee against companies whose business may include hauling services that are incidental to their business. A multi-tiered system would also place undue

burden on businesses that would be forced to keep additional business/accounting records to account for the multi-tier license. Finally, such a system may also result in businesses targeting their results to miss license thresholds.

**Castaway Trash Hauling, Inc. (E-Mail - Included as “Attachment E”):** This company provided a single item in terms of feedback, specifically they asked that the City of Sparks works to “ensure that the hauler is permitted through the Washoe County Health Department before issuing a Business License.”

*City of Sparks Response:* This item was added in the “final” draft of the ordinance that will be considered by the City Council (Item M).

### **NRS 237.090 (ITEM 1-b)**

**Describe the estimated economic effect of the proposed rule on the businesses which it is to regulate, including, without limitation: Both adverse and beneficial effects and both direct and indirect effects:**

Adverse Effect: The new fee proposed under the draft ordinance is 5% of gross receipts. Most business licenses pay roughly 1% of gross receipts. Therefore the proposed ordinance equals a 500% increase in this particular fee to affected businesses.

Beneficial Effect: The fee and the application of this ordinance in the market may have the effect of “leveling the playing field” with respect to the multiple operators in the market place. Many businesses of this type have operated in the market in competition with the franchisee without the limitations placed on the franchisee, specific to their defined rate structure and franchise fees. Passage of this rule will place new attention on those business entities as well as others that have operated in the region without the necessary permits/licenses.

Direct Effect: As proposed, the effective date of the new rule will be 30-120 days after approval by the City Council. This will require an immediate change in the budgeting for license fees by the affected business. Furthermore, the new rule requires quarterly payment of license fees rather than annual payments, necessitating a change in both accounting and payment routines by the business.

Indirect Effect: It is likely that the application of this rule and the associated change in license fee will result in a pass through of that fee to businesses that might contract with the affected waste haulers. This is similar to similar franchise fee pass-throughs that are known or are suspected to occur for public utilities, including garbage service. The indirect effect would be that trash rates in the “open competition” market will likely go up by some percentage to cover the new fee.

**NRS 237.090 (ITEM 1-c)**

**Describe the methods that were considered to reduce the impact of the proposed rule on businesses and a statement regarding whether those methods were used.**

Reduction of any impact would require either reducing the fee itself; changing (increasing) the level at which the rule would apply (percentage of primary business); or both. Given the previous statement by the City Council as well as public statements made by potentially affected businesses, the City feels the levels defined in the proposed rule are fair. Therefore, those methods were not used.

**NRS 237.090 (ITEM 1-d)**

**Describe the estimated cost to the local government for enforcement of the proposed rule.**

The application of this rule represents a change in calculations of fees and an increase in the frequency of billing (from 1/year to 4/year) for a customer count of less than 20 (estimated) businesses. This increase in work is minimal when compared to the total volume of work processed by the City Revenue Division and will be easily absorbed in their day-to-day tasks. The initial implementation will carry some costs as business license classifications are changed and communication with affected businesses can occur. However, this work and the associated cost is minimal and impossible to quantify.

**NRS 237.090 (ITEM 1-e)**

**If this is a new or increased fee, define the total amount the local government expects to collect and the manner in which the money will be used.**

The amount of money collected in this case is entirely contingent on market conditions and the ability for any one business to successfully compete for available revenues. Available revenue in this classification of trash hauling has been shrinking over the past 24 months with the general pace of business. A survey of business license renewals taken in July/August of 2008 indicated that the application of this fee would represent a gain of roughly \$152K/year over the previous license fees. However there is no guarantee business or revenues would continue at this rate.

The money would be collected in the general fund and used for the functions of general government operations, much in the same way most franchise fees are currently used.

**NRS 237.090 (ITEM 1-f)**

**If the proposed rule includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The proposed rule does not duplicate or resemble any existing federal, state or local standards regulating the activity.

Questions or comments concerning this Business Impact Statement can be directed to: Dan Marran, City of Sparks Purchasing Manger at 775-353-2273.

Attachment A

Draft Ordinance Language

**Section 5.20.050 – Solid Waste Container Rental and Associated Hauling of Solid Waste(s) or Recyclable Materials**

- A. The City of Sparks maintains a contractual relationship in the form of an exclusive Franchise Agreement for the "collecting, removing, transporting and disposing or otherwise handling" of all garbage and residential curbside recyclable material within the City of Sparks.
- B. Other business entities may provide similar services to clients generating other types of materials that fall outside of the scope of the franchise agreement.
- C. Every Business entity providing container rental and associated hauling services for the purposes of collecting, processing, recycling or disposing of Solid Waste or Recyclable Materials within the City, as the primary purpose of their business, must obtain and pay for an annual business license at the rate specified within this section.
- D. "Primary Purpose of their business" shall mean that 75% or more of company gross revenues are derived from the rental of containers and/or the associated hauling of containers designed for the processing and/or disposal of solid waste or recyclable materials.
- E. The fee for such a license is payable not later than thirty (30) calendar days after the end of each calendar quarter and shall be: Five percent (5%) of the total gross receipts for those specific services.
- F. **Exclusions.**
  - 1. The current franchisee shall be exempted from the requirements of this section for that segment of business defined in the scope of the current franchise agreement. However, the franchisee will be subject to the requirements of this section for the portions of their business not covered by the scope of the franchise agreement, but fit the description of services defined within this section. In the case of the franchisee, only the services falling outside of the current franchise agreement will be subject to the requirements of this section.
  - 2. Companies or organizations that provide containers at no charge to the generator(s) of recyclable materials and share the proceeds of the re-sold recyclable materials with the generator, shall be exempt from this section for that portion of their business.
- G. Each company that is subject to this section shall, not later than thirty (30) calendar days after the end of each calendar quarter, provide to the city a statement of the amount of revenue the company derived during that calendar quarter from the services provided to each of its customers located within the city.
- H. A license fee not received or postmarked within thirty (30) calendar days after the end of each calendar quarter shall be delinquent, and the licensee shall pay, in addition to the license fee, a penalty of two percent (2%) per month of the delinquent amount.
- I. For the purposes of this section, Solid Waste includes all putrescible and non-putrescible refuse in solid or semisolid form, including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, demolition waste, construction waste, solid or semisolid commercial and industrial waste.

- J. For the purpose of this section, Solid Waste does not include "hazardous" waste as that term is defined by NRS 459.400 to 459.600, inclusive, junk vehicles, dead animals, or waste material typically collected and processed by licensed rendering companies.
- K. Recyclable Material has the meaning ascribed to it in NRS 444A.013 and means solid waste that can be processed and returned to the economic mainstream in the form of raw materials or products, as determined by regulations adopted by the State Environmental Commission and by the Washoe County Health District.
- L. The term "gross receipts" as used in this Section includes all money, cash, receipts, property, or other thing of value collected by licensee from customers who use the "Primary Service" of the licensee.
- M. A licensee shall maintain a current and valid "Health Permit to Operate," as issued by the Washoe County Health District, permitting the hauling of specified materials.
- N. A licensee shall maintain in full force and effect commercial general liability insurance with an insurance company licensed to do business in the State of Nevada. Limits of liability shall be at least \$1,000,000.00 combined single limit per occurrence. Any deductibles or self-insured retentions must be approved by the city.

# Attachment B

## Vendor Listing

(Businesses Identified as potentially affected)

**Company Name**

4-CO Cleaning Services  
A And D Services  
A Team Construction Cleaning LLC  
A&D Construction Clean Up Inc  
Aaron Green Recycling LLC  
American Document Destruction Inc  
Carmens Cleaning  
Castaway Trash Hauling Inc  
Clean Environment LLC (800-Got-Junk?)  
Earth First Recycling Inc  
Empire Contractors LLC  
High Desert Recycling Inc  
J Mac Enterprises Inc  
Majestic Construction Clean Up Inc  
Nash Cleaning Service  
Overstone Hauling Plus  
Patricks Construction Clean Up Inc  
R&C Bobcat Services  
Rollco Service  
Rubbish Runners LLC  
Sani Hut Company Inc  
Shred-It Reno Inc  
Sierra Clean Up Services  
Sierra Restroom Solutions  
Sierra Waste Systems Inc  
Toms Hauling & Cleanup  
Trashco  
Waste Management Of Nevada Inc  
Western Metals Recycling LLC  
YB Messy

# Attachment C

## Letter to Potentially Affected Businesses



March 6, 2009

TO: Potentially Affected Businesses

Reference: Proposed Ordinance Affecting Trash Hauling Services

To Whom It May Concern,

Over the past year the City of Sparks negotiated a new franchise agreement for the “collecting, removing, transporting and disposing or otherwise handling all Residential Curbside Recyclable Materials and all Garbage, generated, deposited and accumulated from residential, commercial, and industrial establishments within the City.” Legal definitions of “Curbside Recyclable Materials” and “Garbage” can be found within the agreement. The effect of the scope in the new agreement is that there are now areas of the solid waste hauling and processing business that are not governed by the franchise agreement and are therefore left to free market competition. Generally speaking, this segment has been described as that containing only commercial or industrial “dry waste”, free from any comingling of “garbage.”

While the City of Sparks specifically negotiated the new agreement in order to facilitate increased competition, this was done in full knowledge that the new franchise would result in reduced revenues to the City due to the reduction in scope. In the course of open City Council discussions and negotiation sessions, competitors to the franchisee indicated a willingness to pay the equivalent of the franchise fee (5% of gross revenues) to gain further access to the market. To facilitate this idea and regain revenues lost in the new franchise agreement, the City of Sparks has drafted an ordinance that will allow for the collection of this amount via a change to the business license fee rate for specific business classifications.

Included with this letter is a draft of language to be added to the City of Sparks Municipal Code. If approved, this language would be inserted in to Chapter 5.20 of the Municipal Code which calls out “License Fees for Specific Businesses.” You have received this letter because the City believes the ordinance may have an impact on your business. Please read the language to determine whether or not you feel this ordinance would apply to you.

The process of sending you this letter satisfies a specific legal requirement defined in Nevada Revised Statutes (NRS). NRS Section 237.030 through 237.100 defines the process the City must follow in adopting new rules that will have a direct fiscal impact on a segment of business. In this case, the City is proposing a new “rule” that “imposes or changes the basis for the calculation of a fee that is paid in whole or in substantial part by business.” The process started with this letter is defined in NRS 237.080 which states:

**NRS 237.080 Prerequisites to adoption of rule by local government.**

1. Before a governing body of a local government adopts a proposed rule, the governing body or its designee must notify trade associations or owners and officers of businesses which are likely to be affected by the proposed rule that they may submit data or arguments to the governing body or its designee as to whether the proposed rule will:

- (a) Impose a direct and significant economic burden upon a business; or
- (b) Directly restrict the formation, operation or expansion of a business.

Notification provided pursuant to this subsection must include the date by which the data or arguments must be received by the governing body or its designee, which must be at least 15 working days after the notification is sent.

The City of Sparks is interested in your feedback regarding the potential adoption of this rule. Written feedback should be sent to the City no later than March 30, 2009 and directed to:

City of Sparks  
Purchasing Manager  
431 Prater Way  
Sparks, NV 89431

or by e-mail: [dmarran@cityofsparks.us](mailto:dmarran@cityofsparks.us)

Upon receipt of any feedback, those comments will be compiled in a "Business Impact Statement" that will be included in all staff reports to the City Council when this rule comes under their consideration. While you are not required to provide comment, the City of Sparks welcomes feedback concerning the potential adoption of this new rule and adjusted business license fee.

The projected timeline for the entire process is outlined below:

Action	Working Days	Effective Date
Draft/Distribute letters to affected businesses and trade groups		No Later than 3/6/09
<i>Required Comment Period</i>	15	3/30/09
Draft Business Impact Statement		April 2009
First Reading of Ordinance (City Council Meeting)		4/27/09
2 <sup>nd</sup> Reading of Ordinance (City Council Meeting), Possible Approval		5/11/09
Wait period until "effective date"	30	6/11/09

Specific questions regarding the draft language or this process can be made by contacting me at 775-353-2273 or via e-mail at the address listed above. However, specific comments regarding the impact on your business should be made in writing so that an accurate record is maintained throughout this process. Thank you for your time and attention to this issue.

Sincerely,

Dan Marran, CPPO, C.P.M.  
Purchasing Manager

cc: City Council Members  
City Manager's Office

# Attachment D

Letter from Empire Waste Systems

March 31, 2009

City of Sparks  
Purchasing Manager  
431 Prater Way  
Sparks, NV 89431

**RE: Feedback- Trash Hauling Services**

To Whom It May Concern:

In response to the City's proposed ordinance regarding trash hauling services within the City of Sparks limits, Empire Contractors, DBA Empire Waste Systems, has a few comments and issues that were not clear in the information provided.

1. Hauler should also provide proof of Washoe County Health Dept. permit, allowing Company to haul within Washoe County. Currently, not all trash haulers have this permit.
2. Clarify, if the proposed fee would also be assessed on Recyclable Materials?
3. Clarify, if the proposed fee would also be assessed on demurrage (rental) fees, fuel surcharges, or other misc additional charges, in addition to the cost of the box/service?
4. The 75% "primary purpose" of their business may be too high of a percentage. How are you going to verify that?

For example, Empire's trash hauling accounted for 30% of its gross revenues in 2008, of which \$50K was in Sparks. That would amount to \$2500 to the City of Sparks at the 5% proposed rate.

5. Maybe the City needs to issue a separate license classification even to those companies who may already have a license for additional activities, such as a contractor. If that contractor or other occupation, decides that they also will be hauling trash, then they need 2 separate business licenses from City of Sparks. One for contracting and one for the trash hauling, regardless of what % of their business is derived from trash hauling.
  - a. Otherwise, a company, whose main purpose is not trash hauling could totally underpriced the competitors, because they would not be paying the additional fees to the City, which is an unfair advantage.

- b. Secondly, because of the “lower” price service, a company could then exceed the 75% of business and now need to pay a fee to the City. How would that be managed? Then the company gets upset, because they now have to pay fees that they didn’t budget for... because of essentially false “growth.”

To keep a fair playing field for all companies who wish to provide trash hauling services within the City of Sparks, Empire would favor a separate permit for trash hauling, regardless of the size, gross revenues, etc of the company. All companies with that permit would be subject to the same City imposed fee (whatever that % becomes). Possibly, then if gross revenues exceed X amount, then payments must be made quarterly, then X amount bi annual, X amount yearly, something to that effect.

Additionally, Empire agrees that a certificate of insurance with the proposed General Liability limits, and a copy of the companies Washoe County Health Permit, should all have to be provided before the City issues a trash/waste hauling permit.

I thank you for your time and consideration.

Sincerely,

Matthew Rager  
Owner, Empire Contractors  
Empire Waste Systems

# Attachment E

E-Mail from Castaway Trash Hauling

**From:** Jay Gardner [mailto:jay@castawaytrashhauling.com]

**Sent:** Monday, April 06, 2009 8:26 AM

**To:** Marran, Dan

**Subject:** RE: Sparks franchised rates

Hi Dan,

Spike and have read the proposal and we have no problems with it. We did have one question, what is the provision for the City of Sparks to ensure that the hauler is permitted through the Washoe County District Health Department before issuing a Business license?

Thanks,

Jay