

**ORDINANCE NO. 2010-2**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
NEWPORT BEACH GRANTING A NON-EXCLUSIVE SOLID  
WASTE FRANCHISE TO ATHENS SERVICES  
TO PROVIDE SOLID WASTE COLLECTION SERVICES  
UPON THE CITY STREETS AND WITHIN  
THE CITY OF NEWPORT BEACH**

The City Council of the City of Newport Beach does ordain as follows:

**SECTION 1: Findings**

A. Article XIII of the City Charter and Sections 49500 through 49523 of the Public Resources Code authorize the City to enter into non-exclusive franchise agreements for commercial solid waste handling services with private solid waste enterprises.

B. The City Charter and Chapter 12.63 establish requirements and procedures to grant a franchise to provide solid waste handling services within the City of Newport Beach.

C. In compliance with the City Charter a duly noticed public hearing was held on February 23, 2010, to consider the granting of a franchise to Athens Services.

D. Having considered all oral and documentary evidence presented at the public hearing, the City Council has determined that the granting of a non-exclusive franchise is in the public interest.

**SECTION 2: Definitions**

All words, terms, phrases in this Ordinance shall have the meanings set forth in Section 12.63.020 of Chapter 12.63 of the Newport Beach Municipal Code.

**SECTION 3: Franchise Agreements**

**A. Grant of Franchises**

There is hereby granted to the enterprise listed below (hereinafter, "Franchisee") a non-exclusive franchise to operate, maintain, and provide solid waste handling services along, across and over the public streets, alleys, public ways and public places dedicated for public use in the City:

(a) Arakelian Enterprises, Inc. DBA Athens Services

## **B. Non-exclusive Grant**

The right to use City streets, alleys, public ways and places for the purposes set forth in this Ordinance, shall not be exclusive and the City reserves the right to grant a similar use of streets, alleys, public ways and places to any person at any time during the term of this franchise.

## **C. Term of Franchises**

The term of the franchise per Section 2 of the Franchise Agreement (“Agreement”) attached hereto as Exhibit A, *Commercial Solid Waste Collection Franchise Agreement between the City of Newport Beach and Athens Services* is hereby adopted, approved and incorporated into this Ordinance by reference, shall commence at 12:01 a.m., on March 25, 2010 and expire on March 1, 2017. The franchise shall take effect on the date specified above provided that the grantee has filed written notice of acceptance in accordance with the requirement of Section 4 of this Ordinance.

## **D. Franchise Fees**

(1) During the term of the Agreement, Franchisee shall pay to City franchise fees for the privilege of providing commercial solid waste handling services in the City of Newport Beach and use of public streets, right of ways, and places for such purposes. Fees shall be in the following amounts:

Franchisee shall pay to the City 10.5% (ten and one-half percent) of the Franchisee’s gross receipts. Franchise fee payments shall be paid quarterly and shall be computed and paid on the basis of paid receipts received by the Franchisee for all solid waste handling services provided by the Franchisee within the City.

One-half of one percent (0.5%) of the franchise fee shall be attributable to the maintenance and implementation of the City’s Source Reduction and Recycling Element (SRRE), and shall be separately accounted for, and used only for the costs stated in Public Revenue Code Section 41901 or any successor provisions.

(2) Franchisee shall pay to the City Environmental Liability Fund, on a quarterly basis, 5.5% of gross receipts for all commercial solid waste handling services provided by the Franchisee in the City. Payment shall be made concurrently with the payment of the franchise fee and the filing of reports specified in Section 4 and Section 6 of the Agreements.

## **E. Inclusion of Franchise Documents**

Franchisee shall comply with and shall be bound by all of the terms, provisions and conditions contained in the City Charter, this Ordinance, Chapter 12.63 of the Newport Beach Municipal Code and the Franchise Agreement.

### **SECTION 4: Effective Date**

This Ordinance shall become effective 30 days from and after the date of its adoption; provided, however, franchises granted by this Ordinance shall not become effective unless and until the grantee files written acceptance of the franchise with the City Clerk, and delivers to the City all bonds and insurance policies required to be furnished in accordance with the requirements of Chapter 12.63 of the Newport Beach Municipal Code and the Franchise Agreement. The written acceptance shall be in form and substance as prescribed by the City Attorney and shall operate as an acceptance of each and every term, condition and limitation contained in this Ordinance, the Franchise Agreement, Article XIII of the City Charter, and Chapter 12.63 of the Newport Beach Municipal Code. The grantee shall file written acceptance of the franchise no later than ten (10) days after the adoption of this Ordinance.

### **SECTION 5: CEQA Exemption**

The City Council of the City of Newport Beach finds that this Ordinance is categorically exempt under the California Code of Regulations Section 15301 and 15308 defined as “existing operations and facilities” and as “actions by regulatory agencies for protection of the environment” respectively. Use of the above exemption classifications are appropriate because this Ordinance does not change nor expand existing solid waste operations and facilities within the City. The Ordinance is also consistent with the goals of California State Assembly Bill 939, *The California Solid Waste Management Act* as well as the objectives of the City’s Source Reduction and Recycling Element (SRRE). The City Manager is authorized to execute and the City Clerk to file a Notice of Exemption with the Orange County Clerk.

### **SECTION 6: Severability**

If any section, subsection, sentence, clause or phrase of this Ordinance 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 Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

### **SECTION 7: Adoption of Ordinance**

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official

newspaper within fifteen (15) days after its adoption. This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 26th day of January 2010, and adopted on the 23<sup>rd</sup> day of February 2010 by the following vote to wit:

AYES, COUNCIL MEMBERS \_\_\_\_\_

\_\_\_\_\_

NOES, COUNCIL MEMBERS \_\_\_\_\_

\_\_\_\_\_

ABSTAINED, COUNCIL MEMBERS \_\_\_\_\_

\_\_\_\_\_

ABSENT, COUNCIL MEMBERS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Leonie H. Mulvihill  
Assistant City Attorney