

Commercial Waste Franchise Program

The City of Cincinnati appreciates the strong stakeholder attendance at the commercial waste franchise program's town hall held virtually on March 14, 2023. The primary intent of the town hall was to present draft upcoming program changes, which are further detailed in the amendment ordinance. Many thoughtful questions and comments were received. Responses to them are provided below.

Town Hall: Responses to Questions and Comments

1. If Construction Company XYZ (as the construction company for a new project, and NOT the commercial waste franchised hauler) is required to pre-pay an estimated commercial waste hauling fee at time of permit application, and a licensed hauler (and NOT the construction company paying the estimated permit fee upfront) is still required to pay a 20% franchise fee on all commercial waste hauled during the construction project isn't the city then collecting money from 2 different companies and double the amount of money for the same work?

The City does not intend to double collect payments for the same commercial waste service performed. The inclusion of the franchise fee payment in the permit application process will allow for detailed financial record keeping. The City's Fee Payment Form will be revised to distinguish work done under a permit where the fee was paid during application from work done without a permit and no estimated payment was made. When a double payment is inadvertently collected, it will be refunded or credited through that process.

2. I confirm in your slide deck it says a commercial waste franchisee can apply or get a credit back from City if they overpay, but how do we know if we have overpaid unless the construction company who paid the estimated permit fee upfront shares this with us since the construction company is applying for the permit and paying the fee and not the franchised hauler?

The City expects the permit applicant to be in coordination with the franchise holder for fee payment. Forms and permit processes will be designed to minimize the occurrence of overpayment.

3. Is it the intention of the city for these rule changes to have the construction or demolition permit applicant and the commercial waste hauler to settle up on charges, fees and credits amongst themselves once a job is completed?

The obligation to pay the estimated fee remains with the franchise holder. There may be circumstances that the franchise holder and the permit applicant need to make arrangements on who will pay the estimated fee prior to the submittal of the permit application.

4. Or is it expected of the commercial waste hauler to clarify and confirm with the construction company customer upfront, if and how much estimated permit fees they have paid at permit application time so the commercial waste hauler (or the construction company) can keep account of the project themselves and possibly the hauler not

collect 20% on some of the work with customer and not remit payments to city for all the work performed?

Please refer to the response to Question #3 above.

5. These are all details and logistics that will need to be implemented between commercial hauler and any construction customer they do commercial waste hauling for, unless the city has recommendations or requirements on this still forthcoming if this amended change is adopted by city council.

The City has no additional requirements planned at this time for interaction between franchise holders and their construction customers.

6. How was the published haul-and-tip-fee rate (HTR) of \$82.50 per cubic yard determined? This rate is far above current local marketplace conditions. For example, RUMPKE currently charges \$850 per 30 cubic dumpster (including current City ordinance fees – see attached quote dated 3/19/2024) which equates to a HTR rate of \$28.33 per cubic yard. This is for “municipal solid waste” debris hauled and disposed up at their Hughes Road Landfill Facility. Use of a local state-licensed C&D disposal facility would be even cheaper – perhaps closer to \$15.00 per cubic yard. The Franchise Fee (FF) for C&D debris would be substantially different if the fee was calculated on the more applicable \$15.00 per cubic yard HTR rather than the arbitrarily published \$82.50 per cubic yard HTR.

The haul and tip rate (HTR) fee was determined from baseline pricing data obtained from local and regional commercial waste collectors and landfill facilities and estimating calculators. The HTR is by the cubic yard (cy) and includes the combined costs for the container usage (\$6/cy), loading services (\$14/cy), delivery and hauling services (\$3/cy), and the disposal - aka tipping fee (\$15/cy) of the commercial waste. The City upon review of the draft HTR found that the delivery and hauling sub-cost was in the incorrect unit of measure which mistakenly resulted in an HTR above market rate. The City has since corrected this and the current HTR to be included in the amendment ordinance is \$38.00, which is in line with the market rate.

7. The Town Hall Slide deck references numerous “forms provided by the City Manager or his or her Designee”. Please provide copies of these forms for Stakeholder review / comment prior to legislative passage of the proposed Amendment.

The forms currently used are available for review on the program’s webpage. Updates to program forms are now being drafted and will be finalized after the legislative changes are adopted. Draft forms will be made available for stakeholder review and comment prior to finalization. Program forms will include:

1. ***Application Form***
2. ***Fee Payment Form***
3. ***Bond Form***
4. ***Environmental Report Form***
5. ***Refund or Credit Request Form***

8. Please provide a detailed list of acceptable recycling facilities located within the City of Cincinnati / Hamilton County that meet the intent of Sec. 730-1-R Recyclable Materials and Sec. 730-1-R Recycling.

The City recognizes Hamilton County and State of Ohio approved facility lists that are permitted and licensed or otherwise in compliance with state solid waste, construction and demolition debris, and recycling regulations. The lists provided below are intended to provide a Hamilton County overview of approved facilities, but the lists may not be inclusive, and they are subject to change. Please contact the City for approval of non-listed facilities.

C&DD Landfills:

- ***Burger Environmental – Newtown, OH***
- ***E-Town Landfill & Recycling – North Bend, OH***
- ***Miamiview Land Development – Cleves, OH***
- ***Newtown Fill – Newtown, OH***
- ***Whitewater Reclamation – Cleves, OH***
- ***Rumpke New Baltimore – Harrison, OH***
- ***H. Hafner & Sons – Cincinnati, OH***

Municipal Solid Waste Landfills:

- ***Rumpke Sanitary Landfill – Colerain, OH***
- ***Bond Road Landfill – Harrison, OH***

Solid Waste Transfer Facilities:

- ***Republic Services – Evendale, OH***
- ***Republic Services – Cincinnati, OH***

Recycling Facilities (Accepted Materials Vary):

- ***Cincinnati Recycling and Reuse Hub – Cincinnati, OH***
- ***Rumpke Cincinnati Recycling Center – Cincinnati, OH***
- ***Cleanlites Recycling – Cincinnati, OH***
- ***River Metals Recycling – Cincinnati, OH***
- ***Cohen Recycling – Sharonville, OH***
- ***Cohen Recycling – Norwood, OH***
- ***The David Hirschberg Steel Company – Lockland, OH***
- ***Byer Steel – Carthage, OH***
- ***M&M Metals – Cincinnati, OH***
- ***A&A Recycling – Arlington Heights, OH***
- ***In-Plas Recycling – Cincinnati, OH***
- ***Cincinnati ReUse Center – Cincinnati, OH***
- ***Recycling Group – Woodlawn, OH***
- ***3R Recycling – Woodlawn, OH***
- ***Recycling Alliance – Evendale, OH***
- ***Homan Metals – Northside, OH***

9. Please provide a detailed list of acceptable recycling facilities located within the City of Cincinnati / Hamilton County that meet the intent of “a legitimate recycling facility” as outlined in Sec. 730-25 Methods of Commercial Waste Collection Item (b).

Please refer to the response to Question #8 above.

10. Who will sign the finalized amendment into law?

After City Council approves the amendment ordinance, the Mayor signs it into law.

11. Does passage of the amendment require a vote from City Council? Mayoral approval? City Manager approval? Or all three?

City Council approves the amendment ordinance by vote, the Mayor signs it into law, and the City Manager has authority to administer it according to its terms.

12. What date will the finalized amendment take effect?

The amendment ordinance as currently drafted will take effect 30 days following its passage.

13. What other franchise revenue(s) or fees does the City of Cincinnati currently collect at the time of Building Permit issuance?

No other franchise program fees are collected at the time of building permit issuance. However, there are other business fees collected at the time of building permit issuance. Please see the included City's Department of Buildings and Inspections Fee Schedule.

14. What other City taxes / franchise fees / revenues are “pre-paid” by entities prior to conducting business within the City limits?

Regarding other City franchise programs, there are various utilities, right-of-way, and e-scooter franchise fees that are required to be pre-paid. The City has other business fees, such as for licenses, not related to franchise programs that are required to be pre-paid.

15. What other City fees are refunded ONLY after detailed accounting by the payee, the entire burden of accounting / proof of which is placed on the payee / franchisee?

Regarding other City franchise programs, this would apply to the e-scooter rental franchise program.

16. Can you share the list of all questions asked with respect to the Draft Amendment, and provide copy of written responses?

The list of all questions and comments received and responses to them is contained herein.

17. Did the City of Cincinnati Office of Environment and Sustainability meet with any current franchisee(s) during drafting of the proposed amendment for the sake of establishing consistency with local market conditions?

Over the course of the last year or more the City has met with and has otherwise engaged program stakeholders through telephone conversations, emails, direct letter mailings, flyers, and webinars. The City has received comments from commercial waste collectors, contractors, and other stakeholders regarding program changes. Comments received were used in drafting the amendment ordinance.

18. Please provide a sample “environmental report” outlined in Sec. 730-17 Item (e) that would be acceptable to the City Manager or the Manager’s designee.

The intention of the environmental report is to describe the amount of commercial waste that went to a landfill and the amount that was recycled. The City currently uses the included form for the purpose of fulfilling this reporting requirement.

19. The Slide Deck refers to refunds being issued as “established by a preponderance of the evidence that actual gross revenues generated by its commercial waste collection services were less than the estimated gross revenues used to calculate its estimated fee payment”. The slide deck also states “...forms to be updated....after the adoption of the ordinance” and “program administrative rules and regulations will be revised.....after the adoption of the ordinance”. How is a current (or future) franchisee supposed to interpret the intent of the draft amendment based on forms that currently haven’t been made available for review – and administrative rules that have not yet been promulgated?

Please refer to the response to Question #7 above.

20. Are refunds issued solely on approval by the City Manager or his or her designee?

As drafted the amendment ordinance would require the City manager or their designee to issue a refund or credit if the franchise holder is entitled to it.

21. Will the City confirm that gross revenues for which an estimated fee has already been paid, are to be excluded, when Franchisee calculates the franchise fee to be paid quarterly?

Yes, confirmed.

22. What changes will be made to the quarterly “Commercial Waste Hauling Franchise Fees” form currently being used, to ensure fees are not collected twice on the same revenue?

It is the City's intention to update the form to include a process to reconcile the different ways fee payments are made. Also, please refer to the responses to Questions #1, #7, and #21 above.

23. Is the City open to making changes to the new proposal?

The intent of the town hall was to share draft policy changes and collect feedback and suggestions from stakeholders. The City has reviewed comments received from the town hall and incorporated some changes outlined in these responses. The City always considers opportunities to enhance the program and user experience. A refined amendment ordinance will then be presented for City council to review.

24. Are the forms requesting a refund available for review? If not, when?

Please refer to the response to Question #7 above.

25. Regarding a request for a refund, what constitutes a "preponderance of the evidence"? Please explain what evidence will be required.

Requesting a refund by a preponderance of the evidence requires demonstrating that the refund amount requested is more likely correct than not correct. Supporting evidence may include but is not limited to invoices, receipts, load tickets, tip tickets, and other project and accounting records.

26. If the HTR rate of \$82.50 proves to be too high, via collecting a far greater amount of fee than actual, would the HRT rate still be increased at a minimum of \$2.50 per year?

Please refer to the response to Question #6 above. Due to the reduction in the HRT, the City has also reduced the minimum increase per year to \$1.00.

27. The proposed changes place a heavy burden on the City's contractors and businesses. In an effort to better serve contractors and businesses wanting to do work in the City of Cincinnati, the City should make the permitting process more of a "one stop shop". When a contractor or business applies for a permit, the City should work out the estimated Franchise Fees, using the method proposed in the new changes, and collect the Franchise Fees from the contractor or business. This process would allow the contractor or business to apply for the permit and receive the permit the same day, creating a better customer service experience.

Yes, the City is in agreement with the principal of this comment and it is embedded in the amendment ordinance. One of the key objectives of the draft amendment ordinance was to better position the City's permitting system to enhance the commercial waste franchise program by decreasing administrative burden, increasing confidence and certainty, and increasing fairness. This policy change is based on recommendations received from stakeholders early in the draft amendment ordinance process.

28. Currently a 30 yard dumpster is around \$600. Add in the City's tax and it's around \$780. How is the City justifying raising the cost of a 30 yard to \$2,475 using \$82.50 per yard from the current rate of around \$780.00?

Please refer to the response to Question #6 above.

29. There is nothing in the formula used to calculate the disposal fee that adjusts for a Franchised Hauler taking the material to a CD&D Recycling facility where 50% or more of the material may be recycled. If an owner or General Contractor applying for the permit mandates the material is taken to a CD&D recycling facility instead of landfill for final disposal shouldn't the calculation take into account the CD&D Recycling Facility's recovery rate?

The estimated fee payment is based in part on the building use's landfill rate. It is not based on an unknown recycling facility's diversion rate. This was done to improve fairness and certainty in the program. If the permitted project diversion rate is higher than the building use's landfill rate, then the franchisee may request a refund or credit for the difference in the estimated fee payment.

30. Franchised Hauler if it pays the fee can apply for a refund after the Building permit is closed. If the building project takes several years will there be interest calculated on the refund similar to an IRS refund? If the project is shut down or moth-balled as many where during 2008 Financial crisis what happens then?

As currently drafted the amendment ordinance would not provide for interest to be calculated on the refund or credit. If the project is shut down, then the permit should be closed, and a refund or credit should be requested at that time.

31. There are a number of compacting services that will reduce the number of dumpsters being used for a particular job. Unfortunately for the Franchised Dumpster hauler these compaction services damage the dumpster and we are doing our best to keep General Contractors from using them. This new policy will reward GC's for using compaction services or their own excavators to smash the trash and thereby damaging our equipment.

The amendment ordinance was not drafted with the intention of giving an unfair advantage for the use of compaction services. It is acknowledged that some materials are better suited for compaction than others and it is generally acceptable to compact such materials as cardboard. Restrictions on compaction services are to be made between the franchise holder and their customers.

32. The formula being used, in my opinion, does not consider the scope of work being performed. For example, based on the scope of work for a commercial office building the number of dumpsters may be considerably less. How are you going to verify the number of loads from a particular job site?

The intent of the estimated fee payment calculation is to create fairness and certainty so that commercial waste volumes from permitted construction and demolition projects do not need to be verified in terms of loads hauled. In order to do this, the number of cubic yards is calculated instead for purposes of the estimated fee payment.