



Wastehaulers Franchise Fee

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Authorization

We have conducted an audit of the Wastehauler Franchise Fees. This audit was conducted under the authority of Article VII, Section 5 of the Garland City Charter and in accordance with the Annual Audit Plan approved by the Garland City Council.

Objectives

The objectives of the audit include:

1. Examine the current franchise agreements and evaluate compliance with the terms and conditions
2. Determine the accuracy of franchise fee payments (**NOTE:** Due to a scope impairment in the franchise agreement, we were not able to audit the Franchisee's financial information: (See Finding 1 in the report); however, we did verify the accuracy of the calculation on those that submitted franchise fees)
3. Determine if all vendors that operate within the City are submitting payments
4. Determine if franchise fees are appropriately accounted for in the City's records

Scope

Our audit period covered January 1, 2007 to March 31, 2010.

Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This included compliance with directives, policies and procedures. We believe that the evidence obtained provides a reasonable basis for our finding and conclusion based on our audit objectives.

While we report to the Mayor and City Council and present the results of our work to the Audit Committee, we are located organizationally outside the staff or line management functions we are auditing. Therefore, this Audit organization may be considered free of organizational impairments to independence to audit internally and report objectively to those charged with governance.

To adequately address the audit objectives, we:

- Reviewed the Franchise Agreement (Obj. 1)
- Reviewed the franchise fees payments sent to the City of Garland for accuracy (Obj. 2)
- Performed site inspections (Obj. 3)
- Obtained maps from GIS (Obj. 3)
- Reviewed financial reports (Obj. 2 & 3)
- Reviewed bank statements (Obj. 4)
- Reviewed City's General Ledger (Obj. 4)

Overall Conclusion

1. Contradictory information exists regarding the authority and responsibility as to who should be monitoring the franchise fees for wastehaulers. (Obj. 3)
2. The City could not audit the wastehaulers records due to a clause in the agreement. The wastehaulers have not been audited in over 8 years. (Obj. 1)
3. Wastehaulers are operating without franchise agreements. (Obj. 1 & 3)
4. Delinquent fees and interest were not assessed on late payments. Three franchise fees payments were unaccounted for and five were originally placed in the wrong account number.(Obj. 1 & 4)
5. Wastehaulers are not submitting financial accounting reports with required information. (Obj. 1, 2, & 3)
6. Commercial containers were not clearly marked. (Obj. 1)
7. Wastehaulers were not required to submit initial audits within a year after the agreement was executed. (Obj. 1)
8. Franchise Agreements are not filed with the City Secretary's Office. (Obj. 1)

During our review, we identified several sources of how the City can receive additional revenue. We can not state the dollar amount due to not being able to verify numbers against the records of the wastehaulers but we can state with certainty that there are additional sources. The sources of additional revenue are as follows:

- Haulers operating without Franchise Agreements and no corresponding franchise fees paid
- Late payment fees
- Delinquent payment interest
- Ability to audit records to determine if adequate payments were made to the City

- Additional sources of revenue in the form of residential roll-off, commercial roll-off containers, restaurant grease, recyclables and frequent Landfill users

Background

City of Garland Code section 52.18 states, "No person may engage in the collection of garbage, solid wastes, or recyclable materials within the City of Garland without first executing the franchise agreement required by the City for that purpose." Commercial wastehaulers franchise fees contributed \$268,244 to the general fund in 2008/2009.

The last time an audit was done of the Wastehauler Franchise Fees was in 2002. At that time, \$101,064.14 in underpaid franchise fees were identified and one company was identified as operating in the City of Garland city limits without a franchise fee agreement. The \$101,064.14 fees were submitted to City. In the audit, it was identified that the franchise fee agreement was last renewed in 1998 and it was recommended that the City manager prepare a new franchise agreement and seek Council approval to place limits of no more than 5 years on the renewal feature of the revised franchise agreements. The old agreement had a term of one year and automatic renewals with no limit. The other recommendation to the agreement was that the City Manager should ensure that the revised franchise agreements remove the ability of wastehaulers to operate for three years after a termination notice is served by the City. The old agreement allowed a wastehauler to operate for three years after the City gave notice to terminate the rights of a hauler to continue to provide waste hauling services in Garland.

Sometime in 2004, a franchise fee agreement was revised and sent out to all the current wastehaulers at the time. A term limit was not placed. The term states: "The term of this Agreement shall be for a period of one (1) year beginning on the date of execution of the Agreement. Unless notice of termination is provided by one party to the other at least thirty (30) days prior to the anniversary date of the Agreement, the Agreement shall automatically renew on the anniversary date if GRANTEE is in compliance with the Agreement..... as for operating 3 years after termination notice, the agreement was changed to: "In recognition of the investment that solid waste collection requires, if the City gives notice of termination under this paragraph, GRANTEE will be permitted to continue its operation in the City as necessary to fulfill its obligations located in the City who have contracts with GRANTEE that are in existence at the time of the notice, but not to exceed six (6) months.

Another section was added which kept Internal Audit from performing the audit of the wastehaulers franchise fees. The section is 12. **Auditing Books and Records:** (B) The City shall notify GRANTEE when it wishes to require an audit

under this section. The City shall select a nationally recognized accounting firm to conduct the audit.....after discussion with the City Attorney's office, we were advised that we could not audit the wastehaulers records because of this clause. We found that we had eight (8) wastehaulers that we had received payments from so we tested to determine if the payments were received timely, if not, were late fees and interest charged, if they had an agreement on file, etc. Because the City is in direct competition, we did not identify any of the wastehaulers in this report. For those who are paying franchise fees, the following is a breakdown to show who had an agreement and who did not:

Wastehauler	Agreement?
A	YES
B	YES
C	YES
D	NO
E	YES
F	YES
G	YES
H	YES

We surveyed other cities around the Metroplex and found that while some cities have their own Solid Waste Departments, no one does their own collection of commercial services. They either only do residential or none at all and contract all the services out to another vendor. The City of Garland is the only city that is in the collection of commercial services and therefore, to wastehaulers, the City is considered a competitor.

We obtained assistance from our GIS Department to help us identify the areas where commercial businesses are located. They used the GIS database to create a map for us that showed clusters of commercial areas. We used their map to then determine which areas we would perform site inspections. We identified the areas with the most commercial customers and decided we would perform our site inspections of those areas. The areas reviewed were in the Jupiter, I30, 190 and HWY 78 areas.

Code **10.05** of the City of Garland Code of Ordinances, **General penalty for violations; responsibilities of owners, managers, and occupants; agent for service** section (A) states: General penalty for violations of ordinances. Whenever in this Code or in any ordinance of the City an act is prohibited, or is made or declared to be unlawful, an offense or a misdemeanor, or wherever in such Code or ordinances the doing of any act is required, or the failure to do any act is declared to be unlawful, unless the offense is otherwise expressly punishable by the imposition of a civil or administrative penalty, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding two thousand dollars (\$2,000.00) for any ordinance that

governs fire safety, zoning, or public health and sanitation, including dumping of refuse; provided, however, that the penalty for any other violation of an ordinance shall be punished by a fine not exceeding five hundred dollars (\$500.00). If the laws of this state mandate a different penalty for the same or similar offense, then the laws of this state shall control. This section of the code, allows the City to issue citations to those wastehaulers that are not in compliance with Section 52.18 of the Code of Ordinances for not executing a franchise agreement with the City.

Management Accomplishments

Monitoring commercial wastehaulers to identify and require firms operating in Garland to sign a franchise agreement, ensure that franchise payments are made accurately and on time, assess interest and/or penalties for non-payment, inaccurate payments, or late payments, and enforce compliance with the Code of Ordinances is very labor-intensive. It requires considerable attention by a dedicated staff member to conduct research, frequent phone calls, mailings, and visual field inspections. Since 1988, this work has been performed by a Financial Services employee with many other significant responsibilities. Consequently, this function was a very low priority that only received attention when time permitted.

As pointed out in the audit report, all other Metroplex cities surveyed either provide residential collections only or none at all. The City of Garland is the only city that collects commercial waste, which requires various city departments to perform additional responsibilities in support of that function.

Because of the current audit findings, this responsibility is being reassigned to another Financial Services employee, but other work may get pushed to a lower priority as a result. No one knows how much additional revenue that increased scrutiny of this function might generate so it is very difficult to determine whether or not the benefits outweigh the costs. We will do our best to maintain the current workload and perform the additional duties recommended in the audit.

Opportunities for Improvement

During our audit we identified certain areas for improvement. Our audit was not designed or intended to be a detailed study of every relevant system, procedure, and transaction. Accordingly, the Opportunities for Improvement section presented in this report may not be all-inclusive of areas where improvement might be needed.

Finding #	Condition (The way it is)	Criteria (The way it should be)	Cause (Difference between condition & criteria)	Effect (So what?)	Recommendation	Management Response
1 (Obj. 3)	Contradictory information exists regarding the authority and responsibility as to who should be monitoring the franchise fees for waste haulers.	Code 52.02 states, the responsibility falls under the Director of Solid Waste and Recycling Services. Response to Finding #8 for Audit 0221 stated that the Revenue Manager monitors responsibilities for waste haulers and responsibilities for waste haulers should be shared by other	Director of Solid Waste and Recycling has a conflict of interest due to the fact that the Solid Waste Department is in direct competition with other commercial waste haulers therefore does not assume authority and responsibility for the monitoring of waste hauler franchise fees.	Nobody has monitored waste haulers franchise fees.	Management needs to clarify who is going to be responsible for enforcing the franchise agreements for waste haulers.	Finance has been monitoring the waste hauler franchise agreements when time permitted but was unable to provide a full time position to perform this task. The monitoring of the waste hauler franchise fees has been assigned to another employee in addition to his current duties and responsibilities to

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		<p>departments. City Manager stated he intends to form a task force.</p>				<p>address this finding.</p>

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2 (Obj. 1)	Wastehauler franchise fees have not been audited for over 8 years.	Section 12 of the Franchise Agreement <u>Auditing Books and Records:</u> (A) The City shall have the authority to require an audit of the books and records of the GRANTEE... (B) ... The City shall select a nationally recognized accounting firm to conduct the audit.	The franchise fee agreement was revised in 2004 and the change was made to where the City would select a nationally recognized accounting firm to perform the audit. Management has not requested an audit since the franchise fee agreement was revised.	a. It is uncertain if the City is receiving proper fee from wastehaulers for use of the rights-of-way. b. All wastehaulers must pay the appropriate fees so the system is equitable for all.	We recommend that Management looks into hiring a nationally recognized accounting firm to conduct an audit of the wastehaulers franchise fees or should consider changing the franchise agreement allowing the City to conduct the audit.	Management will explore the financial feasibility of obtaining a nationally recognized accounting firm to conduct audits of wastehauler's books and records. Management will also consult with the City Attorneys Office about the possibility of changing Section 12 of the Franchise Fee Agreements.

Finding #	Condition (The way it is)	Criteria (The way it should be)	Cause (Difference between condition & criteria)	Effect (So what?)	Recommendation	Management Response
3 (Obj 1 & 3)	<p>a. During our review of records and site inspections, we identified ten (10) wastehaulers that are operating in the City without a franchise agreement.</p> <p>b. Of all the ones that don't have a franchise agreement with the City, only one is submitting payments.</p>	<p>The City Code of Ordinance Sec. 52.18 Collection by persons other than City, franchise agreement; states: No person may engage in the collection of garbage, solid wastes, or recyclable materials within the City without first executing the franchise agreement required by the City for that purpose.</p>	<p>Lack of monitoring has led to wastehaulers conducting business in the City of Garland and using the right of ways without a franchise agreement.</p>	<p>a. It is uncertain if the City is receiving proper franchise fees from wastehaulers for use of the rights-of-way.</p> <p>b. All wastehaulers must pay the appropriate fees so the system is equitable for all.</p>	<p>a. We recommend that Management ensures that all wastehaulers have a franchise agreement and pay the 5% franchise fee as indicated in the franchise agreement.</p> <p>b. Issue citations to wastehaulers who are non-compliant as it states in Sec. 10.05 of the City of Garland Code of Ordinances.</p>	<p>Management will work to obtain Franchise Agreements with the wastehaulers known to be operating in the City. Management will discuss the legal options and actions available to enforce section 10.05 of the Code of Ordinances.</p>

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4 (Obj. 1 & 4)	<ul style="list-style-type: none"> a. Out of the 98 payments that were received, 36 were received 1 to 83 days late. b. Three payments were not accounted for and we can't determine if the payments were ever received or put into a wrong account number. c. We found that five payments were coded to a wrong account number but later reversed 	<p>The Wastehauler Franchise Agreement states in section 9.</p> <p><u>Franchise Fee:</u> <u>(B) Fee Payment:</u> The franchise fees shall be paid on a quarterly basis no later than thirty (30) days after the end of each calendar quarter. The payment shall be made to the City of Garland Accounting Department.</p> <p><u>(C) Delinquent Payments:</u> Fee payments received after the due date shall be subject to interest</p>	<p>Penalties or fees were not collected by the Finance Department because there is no mechanism in place that monitors if a payment was received on time or received at all.</p>	<p>The City has been losing additional revenue by not imposing the twelve percent (12%) per annum and/or the five percent (5%) late payment penalty fee on late payments or payments not received.</p>	<ul style="list-style-type: none"> a. We recommend that Management ensures that payments are made in a timely manner. b. That payments are accounted for in the right account number. c. That interest and/or penalties are assessed to those that do not submit payments on time. 	<p>Management will monitor franchise fees to ensure that payments are received from wastehaulers in a timely manner, accounted for correctly and penalties and interest are assessed on late payments.</p>

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	<p>to the right account number. The reversals were done between 5-7 months later.</p> <p>d. No penalties or interest were assessed on any of the late payments.</p>	<p>at the rate of twelve percent (12%) per annum until the fees are paid in full. In addition, delinquent fees shall be subject to a late payment penalty of five percent (5%) for each month or portion thereof that the fees are outstanding.</p>				

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5 (Obj 1, 2 & 3)	In our review of the waste haulers financial accounting reports which were obtained from the Financial Services Department, we found that four (4) did not submit financial reports. We recalculated the figures for the four that submitted reports (for one quarter only) and found that one underpaid the City of Garland by approximately \$700.	The franchise agreement states in section 11. Reports: Each quarterly payment shall be accompanied by a financial accounting report satisfactory to the City. The purpose of the report is to show the basis of the computation of the quarterly payment. The report shall include the sources and amounts of revenues upon which the payment was calculated...	The City has not received the required financial reports. Also, for reports that are submitted, the figures are not verified by the City.	Waste haulers are not in compliance with the Franchise Agreement. When waste haulers do not submit their required financial accounting reports, the City of Garland can only assume what is being submitted for payment is accurate.	We recommend that Management ensure that all financial accounting reports with the required information is submitted by all waste haulers. Monitoring should be done to ensure they are submitting accurate information. Management should attempt collection on the \$700 underpayment.	Management will ensure that waste haulers abide by section 11 of the franchise fee agreement and provide financial reports along with their quarterly franchise fee payments.

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6 (Obj. 1)	Seven (7) of the waste hauler files that were reviewed did not have an initial audit to determine baseline revenues.	The Franchise Agreement states in section 12. <u>Auditing Books and Records:</u> (D) An initial audit to determine baseline revenues shall be conducted, at the expense of the GRANTEE, within one (1) year from the date of the execution of this Agreement. The GRANTEE shall deliver the results of the audit to the City within thirty (30) days of receipt of the audit report.	Follow-up was not made after the one (1) year execution of the franchise fee agreement to ensure that an audit was obtained by all waste haulers.	The current waste haulers are not in compliance with the current franchise agreement. The City has no assurance of what the revenue should be.	We recommend that Management have each waste hauler submit an audit of baseline revenue.	Management will contact the waste haulers and request that initial audits be provided to the City as required in section 12 of the franchise agreements.

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7 (Obj. 1)	During site inspections on Tuesday, June 15, 2010, we found that some containers were not clearly marked to identify who they belong to and some had labels of companies that have since merged or no longer exist.	In the Franchise Agreement section 5. <u>Regulation of Leased Containers</u> on section (E) it states: ALL such containers shall be clearly marked with the GRANTEE's current name and telephone number in letters not less than four (4) inches in height.	There is no monitoring from any City department to ensure that the franchise agreement for wastehaulers is being enforced by all commercial haulers.	a. Wastehaulers are not in compliance with the Franchise Agreement when they do not ensure that their containers are clearly marked and updated to the current wastehauler information. b. Also, the City would not be able to notify the owner.	We recommend that Management ensure all wastehaulers have clearly marked containers with current company information.	Management will ensure wastehaulers are informed that they must abide by section 5 (E) of the Franchise Fee Agreement and clearly mark all containers with current company names and contact information.

Finding #	Condition (The way it is)	Criteria (The way it should be)	Cause (Difference between condition & criteria)	Effect (So what?)	Recommendation	Management Response
8 (Obj. 1)	The original Franchise Fee Agreements for Wastehaulers were not filed in the City Secretary's Office.	Per City Secretary's Directive #5, Departmental Original Documents Filing, it states that "The City Secretary's Office is the repository for the <u>original</u> active documents.	The original Franchise Fee Agreements were kept by the Finance Department.	It is difficult to quickly locate original documents when departments do not ensure that original documents get filed with the City Secretary's Office. In order to ensure compliance the original documents must be filed with the City Secretary's Office.	We recommend that Management ensure that all original Franchise Fee Agreements are filed with the City Secretary's Office per City Secretary's Directive #5.	Management will provide the City Secretary with original Franchise Fee Agreements (copies will be provided if originals are not available). In the future all originals will be filed with the City Secretary's Office.