ANALYSIS

This ordinance amends Chapter 4.63 of Title 4, Business License Tax-Disposal Facilities, of the Los Angeles County Code, relating to the tax imposed on waste disposal facilities located in the unincorporated areas of the County. This ordinance would ratify the current tax rate of 10 percent of gross receipts, which was adopted by ordinance on January 22, 1991, by the Los Angeles County Board of Supervisors, and is imposed on operators of waste disposal facilities. The ordinance is further amended to add the definitions of "operator," "board," "gross receipts," "appellant," and "days," and to clarify the process for obtaining a registration certificate, and the reporting of the tax by the waste disposal facility. The ordinance is also amended to change the process by which an operator of a waste disposal facility can appeal the imposition of the tax by allowing for a first level hearing by the tax administrator, and a second level hearing by the board. This ordinance will become effective only after approval by a majority of the qualified voters in the County voting in an election on the issue.

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SP:sc

ORDINANCE NO. 2012-0042

An ordinance amending Title 4 – Revenue and Finance of the Los Angeles County Code, relating to the tax imposed on disposal facilities.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 4.63 of the County Code is hereby amended, and it shall read as follows:

4.63.010 Short Title.

This chapter shall be known as the "Business License Tax Ordinance -- Disposal Facilities."

4.63.020 Tax imposed.

There is established and imposed, on January 22, 1991, the effective date of the ordinance codified in this chapter, a business license tax in the manner and at the rates set forth in this chapter.

4.63.030 Purpose of this chapter.

This chapter is enacted solely to raise revenue for the general governmental purposes of the county and not for purposes of regulation. All of the proceeds from the tax imposed by this chapter shall be placed in the county's general fund and used for the usual current expenses of the county.

4.63.040 Effect on other ordinances.

Persons required to pay a license tax for transacting and carrying on business under this chapter shall not be relieved from the payment of any license fee for the privilege of doing such business required under any other ordinance of the county,

and shall remain subject to the regulatory provisions of other ordinances.

4.63.050 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

A. "Disposal facility" means any place, location, tract of land, area, or premises in use for the permanent disposal of solid or liquid wastes.

B. "Operator" means the person, business, or other legal entity who is the proprietor of the disposal facility, whether in the capacity of owner, lessee, sublessee, licensee, or any other capacity.

~~B.~~C. "County" means the county of Los Angeles.

D. "Board" means the board of supervisors of the county of Los Angeles.

E. "Gross receipts" means the totality of income that the disposal facility collects, accounts for, records, or recognizes for the disposal of solid or liquid waste from whatever source, without any offsetting accounting entry, deduction, or expense paid with respect to the disposal of the solid or liquid waste.

(1) This term shall include all amounts collected, accounted for, recorded, or recognized by the Operator from the disposal of solid or liquid waste at the

disposal facility; and

(2) Income, revenue, earnings or collections from related-party transactions and intercompany transactions.

(3) Intercompany transactions shall mean those transactions between a parent and subsidiary of the Operator or between subsidiaries of the Operator, or if the Operator is a subsidiary of a parent company, transactions between or among fellow subsidiaries that report to the same parent company, in which the Operator collects, accounts for, records, or recognizes income, revenue, or earnings from the disposal of solid or liquid waste at the disposal facility.

~~C.~~F. "Tax administrator" means the treasurer and tax collector of the county of Los Angeles.

~~D.~~G. "Registration certificate" means business license tax registration certificate.

H. "Appellant" means any Operator who exercises its administrative appeal remedy pursuant to Section 4.63.150(E) of this chapter.

I. "Days" means calendar days.

4.63.060 Unlawful business not authorized.

No registration certificate or permit issued pursuant to any other section of this code, or the payment of any tax required under the provisions of this code shall be construed as authorizing the conduct or continuance of an illegal business or of a legal business in an illegal manner.

4.63.070 Exemptions.

Nothing in this chapter shall be construed as requiring payment of any tax for

engaging in a business or the doing of an act when such payment would constitute an unlawful burden upon or an unlawful interference with interstate commerce, or which would be in violation of California statute, the Constitution of the United States or the Constitution of the state of California.

4.63.080 Registration Certificate Required.

A. No person shall conduct a disposal facility in the unincorporated areas of the county without an unrevoked registration certificate from the county authorizing them to do so, valid and in effect at the time, and without complying with any and all regulations of such business contained in this chapter.

B. No later than March 15th of each calendar year, every operator subject to this chapter shall file a completed and signed application for registration certificate with the tax administrator.

C. In the case of any operator starting a new disposal facility on or after January 1st of any calendar year, and such disposal facility is subject to the tax imposed by this chapter, said operator shall, within 30 days of the start of such business, make application for a registration certificate by filing a completed and signed application for registration certificate with the tax administrator.

4.63.090 ~~Registration Certificate Required~~ Imposition of Tax.

A. A business license tax in the amount set forth in subsection ~~C~~ B is hereby imposed on every private and public operator of a disposal facility.

~~B. No later than March 15th of each calendar year, every operator subject to this chapter shall file a completed and signed application for registration certificate with the tax administrator.~~

~~C.~~ B. The business license tax for each calendar year shall be a sum equal to 10 percent of gross receipts from fees and charges collected, accounted for, recorded, or recognized by the operator of the disposal facility from the disposal of solid and liquid waste at the disposal facility.

~~D.~~ C. The tax incurred based on gross receipts for the months of January through June shall be due and payable on the last day of the month of July. Taxes shall become delinquent on the last day of July unless, on or before July 31st a statement of gross receipts, in the form prescribed by the tax administrator, is filed with the tax administrator, in which case the tax incurred for the months of January through June shall become delinquent as of the last day of the month of August. The tax incurred based on gross receipts for the months of July through December shall be due and payable on the last day of January of the following calendar year. Taxes shall become delinquent on the last day of January unless, on or before January 31st a statement of gross receipts, in the form prescribed by the tax administrator, is filed with the tax administrator, in which case the tax incurred for the months of July through December shall become delinquent as of the last day of the month of February.

D. The operator shall separately state the amount of tax from the amount of gross receipts from fees and charges collected, accounted for, recorded, or recognized from the disposal of solid or liquid waste at the disposal facility, in the form prescribed by the tax administrator.

4.63.100 Interest and penalty.

A. Taxes which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent.

B. Whenever the tax administrator discovers taxes owed to be delinquent, the tax administrator shall impose a penalty of 20 percent of the amount of the tax owed and such penalty shall attach to the amount of the tax due and shall be paid by the operator owing the tax.

C. Whenever the tax administrator determines that an operator has failed to file an application for registration certificate or has will fully falsified the application for registration certificate or the statement of gross receipts required in Section 4.63.090 of this chapter, the tax administrator shall levy an additional penalty of 20 percent of the tax due, provided that such penalty shall not be less than $100.00 nor more than $2,500.00. Payment of said penalty shall be due and payable within 30 days of the date of notification.

D. Any operator required to remit delinquent taxes as required in this section shall pay interest at the rate of one and one-half percent per month, or portion thereof, on the amount of tax owed, exclusive of penalties, from the date on which the taxes first became delinquent until paid.

E. The tax administrator shall notify operators owing delinquent taxes, penalties or interest. The notice shall be served on the operator by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the operator at the address to which he is known to the tax administrator to engage in the business subject to the taxes, penalties or interest imposed by this chapter.

4.63.110 Actions to collect.

Any taxes, penalties or interest required to be paid by an operator engaged in business under the provisions of this chapter shall be deemed a debt owed by that operator to the county. Any operator owing money to the county under the provisions of this chapter shall be liable in an action brought in the name of the county for the recovery of such amount, and for attorney's fees and costs incurred in bringing the action. The liability for attorney's fees shall be based on the reasonable cost incurred by the county in utilizing either the services of the county counsel, or the services of an attorney in private practice.

4.63.120 Additional powers and duties of tax administrator.

A. The tax administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this chapter.

B. The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes, penalties and interest herein imposed. A copy of such rules and regulations shall be on file in the tax administrator's office.

C. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter.

4.63.130 Records.

It shall be the duty of every operator required to pay to the county any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of tax for which he may have been liable.

The tax administrator shall have the right to inspect such records at all reasonable times.

4.63.140 Refunds.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter it may be refunded as provided in this section.

B. Pursuant to subsection A of this section, any operator may claim a refund, provided such refund is claimed no later than three years from the date of overpayment.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

4.63.150 Assessment -- Administrative remedy.

A. 1. Whenever the tax administrator determines that any tax is due or may be due to the county under the provisions of this chapter, he may make and give notice of an assessment of such tax.

2. The notice of assessment shall separately set forth the amount of any tax known by the tax administrator to be due or estimated by the tax administrator, after full consideration of all information within his knowledge concerning the business and activities of the operator assessed, to be due under each applicable section of this chapter and shall include the amount of any penalties or interest accrued on each amount to the date of notice of assessment.

B. The notice of assessment shall be served upon the operator either by handing it to him personally, or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the operator at the address of the location of the

business appearing on the face of the registration certificate issued to him or to such other address as he shall register with the tax administrator for the purpose of receiving notices provided under this chapter; should the operator have no registration certificate issued to him and should he have no address registered with the tax administrator for such purpose, then to such operator's last known address. For the purpose of this section, a service by mail is complete at the time of deposit in the United States mail. Within 15 days after the date of service, the operator assessed may either apply in writing to the tax administrator for a hearing on the assessment or may file a written request that such hearing be waived. If the operator neither requests a hearing upon the assessment nor requests a waiver of hearing within the prescribed time, the amount of the assessment shall be final and the amount thereof shall immediately be due and owing to the county, but penalties and interest as provided by this chapter shall continue to accrue until paid.

C. If the operator requests that the hearing be waived, the tax administrator may either grant such request and notify the operator thereof in writing or may, in his discretion, deny the request and set the assessment for hearing at the time and in the manner prescribed by subsection D hereof. If the tax administrator grants the request for waiver of hearing, the administrative proceedings prescribed by this section shall be deemed exhausted and the county shall have the right to bring an action in any court of competent jurisdiction to collect the amount of the assessment, plus such penalties and interest as may have accrued thereon as provided by this chapter.

D. <u>If an application for hearing is made, the tax administrator shall give not less than five days written notice in the manner prescribed in this chapter to the</u>

operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in subsection E hereof.

~~If the operator requests a hearing upon the assessment, or if the tax administrator denies his request for a waiver of hearing, the tax administrator shall cause the matter to be set for hearing before the business license commission not later than 90 days after the date of the application, or as the case may be, the date of the tax administrator's denial of the request for waiver of hearing. Notice of the time and place of the hearing shall be mailed to the operator assessed not later than 15 days before the date set for hearing and, if the tax administrator desires such operator to produce specific records at such hearing, such notice may designate the records required to be produced.~~

E. Any operator aggrieved by any decision of the tax administrator with respect to the amount of the tax, interest and penalties, if any, may appeal to the board by filing a notice of appeal with the clerk of the board within 15 days of the serving or mailing of the determination of the tax due. Upon the filing of a notice of appeal, the board shall fix a time and place for hearing such appeal and the clerk of the board shall give not less than five days' notice in writing, either personally or by United States mail,

postage prepaid.

~~The hearing prescribed by this section shall be before the business license commission. At the hearing the operator assessed and the tax administrator, may submit such evidence as they believe to be relevant to their respective positions. The business license commission may require the presentation of additional evidence from either the operator assessed or from the tax administrator, or from both, and may continue that hearing from time to time for the purpose of allowing the presentation of additional evidence.~~

F. Appointment of Referee. The board may appoint a referee to take testimony at any hearing provided for in subsection E of this chapter, and to report his findings and recommendations to the board. Neither the tax administrator nor any officer or employee in the office of the tax administrator may be appointed referee.

~~Decision of the Board of Review. Upon completion of the hearing, the business license commission may (1) affirm the assessment, (2) increase the assessment, or (3) decrease the assessment, as the evidence may require; but the amount of the assessment shall not be increased unless the claim for the increase is asserted on behalf of the county either before or during the hearing. Written notice of the decision of the business license commission shall be given to the operator assessed in the same form and in the same manner as the notice of assessment.~~

G. Compensation for referee. If the board appoints a county officer or county employee to act as referee, he shall serve as such without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

~~Within 15 days from the date of service of the notice of decision of the business license commission, the operator assessed may file written exceptions to the decision of the business license commission, but he shall not be required to do so. If he does not do so, he shall nevertheless be deemed to have exhausted the administrative proceedings provided by this section. Upon filing of written exceptions, the business license commission may either deny the exceptions or modify its decision; it shall cause a written notice of decision as required by subsection F hereof, to be given to the operator assessed at the time, and in the manner provided therein. If the business license commission does not modify its decision within 30 days from the service of said exceptions, the exceptions shall be deemed denied.~~

H. Conduct at Appeal Hearing. At the time set for the hearing, or at the date to which the hearing may be continued by the board or referee, the board or referee shall hear the appellant and any other competent witnesses and decide whether the determination of the tax administrator was correct or not, and if not what tax, interest or penalties, if any, are due to the county from the appellant. The referee may place any witnesses, including the appellant, under oath.

~~Failure of the tax administrator to set any hearing within the time prescribed in this section and failure of the business license commission to complete any procedure prescribed in this section within the period stated shall not affect the validity of any proceedings taken hereunder.~~

I. Final Determination at Appeal Hearing. The board shall determine from the evidence or from the report of the referee, what tax, interest or penalties, if any, are due to the county from the appellant. This decision shall be final and conclusive. The

clerk of the board shall serve a copy of the decision upon the appellant as provided in subsection E hereof. Any amount due shall be immediately due and payable upon the service of the said notice.

~~Acceptance of any payment upon an assessment, the validity of which has not previously been passed upon by the business license commission, shall not preclude the tax administrator from subsequently levying another assessment in any case where the original assessment does not truly reflect the correct tax liability.~~

4.63.160 Confidential character of information obtained -- Disclosure unlawful.

It shall be unlawful for the tax administrator or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a business tax registration certificate, or pay business tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or return, or to permit any statement or return, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:

1. The disclosure of information to, or the examination of records and equipment by, another county official or employee for the sole purpose of administering or enforcing any provision of this chapter;

2. The disclosure of information to, or the tax officials of another city or

county, or city and county, if a reciprocal arrangement exists; or to a grand jury;

3. The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any business tax liability of the particular taxpayers to the county;

4. The disclosure, after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the county counsel approves each such disclosure and that the tax administrator may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby; and

5. The disclosure of the names and addresses of persons or operators to whom registration certificates have been issued.

4.63.170 Severability.

~~If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portion of this chapter or any part thereof. The board of supervisors of the county of Los Angeles hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid.~~ If any

provision of this ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this ordinance are severable.

4.63.180 Ratification of Prior Tax.

The voters of the county of Los Angeles hereby ratify and approve the past collection of the "Business License Tax-Disposal Facilities" under Chapter 4.63 as amended by Ordinance No. 91-0017, which was adopted by the Los Angeles County Board of Supervisors on January 22, 1991.

SECTION 2. Execution. The Chair of the Board of Supervisors is authorized to attest the adoption of this Ordinance by the voters of the County at the Election of June 5, 2012, by signing a certification below:

I hereby certify that the foregoing Ordinance was PASSED, APPROVED, and ADOPTED by the people of the County of Los Angeles voting on the 5th day of June, 2012.

Chair of the Board of Supervisors

[463010SPCC]

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

ATTEST: SACHI A. HAMAI
EXECUTIVE OFFICER
CLERK OF THE BOARD OF SUPERVISORS

By _____, Deputy