



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Blvd • Long Beach, California 90802

December 4, 2012

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the hearing officer's recommendation to revoke business license number BU20919340 issued to Key Disposal, Inc., located at 11412 S. Taylor Ave., Montebello, CA. (Citywide)

DISCUSSION

The Long Beach Municipal Code (LBMC) requires a hearing be held before the City Council whenever a revocation of a business license is appealed.

On July 10, 2012, the City Council referred the appeal of the business license revocation for Key Disposal, Inc., to a hearing officer and the revocation hearing was held on August 30, 2012. When the City Council appoints a hearing officer to conduct the appeal proceedings, the LBMC also requires the City Council to review and consider a hearing officer's written report. The City Council may adopt, reject or modify the recommended decision. In its discretion, the City Council may take additional evidence at the hearing or refer the case back to the hearing officer with instructions to consider additional evidence.

Attached for your review is Hearing Officer Alexander M. Dai's September 14, 2012 written report (Attachment A). Hearing Officer Dai recommends that the business license (BU20919340) issued to Key Disposal, Inc., located at 11412 S. Taylor Ave., Montebello, CA, for mobile service be revoked. The hearing officer's findings determined the following:

- John Katangian owns Key Disposal, Inc.
- Key Disposal, Inc., holds a business license for Mobil Services–Misc–Hauling Recycling Only (BU20919340).
- This hearing was conducted pursuant to written notice served upon the licensee, Key Disposal, Inc., in accordance to LBMC Chapter 2.93.
- At all times herein, John Katangian and Key Disposal, Inc., had actual knowledge and constructive knowledge of unauthorized hauling of non-recyclable trash taking place.

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This matter was reviewed by Deputy City Attorney Kendra Carney on November 14, 2012.

TIMING CONSIDERATIONS

The hearing date of December 4, 2012, has been posted on the business location, and the property owner has been notified by mail.

FISCAL IMPACT

There is no fiscal or local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



**JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT**

ES:smc
K:\Exec\Council Letters\Business Relations\Hearing Letters\12-04-12 ccl - Key Disposal Inc - Hearing Officer Recommendation.doc

ATTACHMENT

APPROVED:



**PATRICK H. WEST
CITY MANAGER**

ATTACHMENT A

1 ALEXANDER M. DAI, ESQ. SBN 083267
ADMINISTRATIVE HEARING OFFICER
2 OFC (626) 484-8333
FAX (626) 447-0718
3 EMAIL aldesq@yahoo.com

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ADMINISTRATIVE HEARING FOR THE CITY OF LONG BEACH

9

10 ADMINISTRATIVE HEARING TO SHOW) HEARING OFFICER'S RECOMMENDATION AND
CAUSE WHY BUSINESS LICENSE NO.) FINDINGS
11 BU20919340 ISSUED TO KEY DISPOSAL)
INC., LOCATED AT 11412 S. TAYLOR)
12 AVE., MONTEBELLO, CALIFORNIA, SHOULD) Hearing Date: August 30, 2012
NOT BE REVOKED PURSUANT TO LBMC)
13 3.80.429.1)
14)
15)

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I. INTRODUCTION

18

This appeal came on regularly for hearing before the Administrative

19

Hearing Officer Alexander M. Dai on August 30, 2012 at 3:30 PM at Long Beach

20

City Hall located at 333 W.Ocean Boulevard, Long Beach, CA 90802. Appellant

21

licensee KEY DISPOSAL INC. (KEY DISPOSAL) and owner John Katangian appeared

22

and were represented by Thomas A. Nitti, Esq., Law Offices of Thomas A.

23

Nitti. The City of Long Beach (CITY) was represented by Deputy City Attorney

24

Kendra L. Carney, Esq.

25

Present were: City of Long Beach, Department of Financial Management -

26

Eric Sund, Business Relations Manager and Bret Yakus, Business Relations

27

HEARING OFFICER'S RECOMMENDATION AND FINDINGS

28

ATTACHMENT A

1 Lead; City of Long Beach, Department of Public Works, Environmental Services
2 Bureau - Dikran (Diko) Melkonian, General Superintendent of Operations and
3 Norma Palomera, Refuse Field Investigator.
4

5 LEGAL AUTHORITY

6 The authority to conduct this hearing is found in LBMC §§380.429.1,
7 3.80.429.5

8 • The belief that the licensee has failed to comply with applicable
9 ordinances or statutes empowers the Director to notice a hearing at
10 which the licensee may show cause why the license should not be
11 revoked.

12 • Following such a hearing and receipt of the hearing officer's
13 report, the Director may revoke or suspend the license.

14 • In the event the license is revoked by the Director, the licensee
15 has the right to file a written appeal to the Long Beach City Council.

16 • City Council shall notice a hearing to appellant licensee and
17 shall hear the appeal itself or refer the matter to a hearing officer.

18 • The determination of the City Council on the appeal shall be
19 final.
20

21 II. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE CITY

22 The City introduced two notebooks, which are incorporated into this
23 HEARING OFFICER'S RECOMMENDATION AND FINDINGS, by this reference, as if set forth in
24 *haec verba*, as follows:

- 25 Exhibit 1 Notice of License Revocation Hearing
- 26 Exhibit 2 Business License Application BU20919340

27 HEARING OFFICER'S RECOMMENDATION AND FINDINGS

ATTACHMENT A

- 1 Exhibit 3 Business License and Invoice BU20919340
- 2 Exhibit 4 Account Details BU20919340
- 3 Exhibit 5 California Secretary of State
- 4 Exhibit 6 Letter from Environmental Services Bureau (04=4-17-2012)
- 5 Exhibit 7 Pictures
- 6 Exhibit 8 California Code Section 49500-49505
- 7 Exhibit 9 Long Beach Municipal Code (LBMC) 8.60.080 and 8.60.089
- 8 Exhibit 10 Long Beach Municipal Code (LBMC)Chapter 3.80
- 9 Exhibit 11 Hearing Office's Decision
- 10 Exhibit 12 Correspondence between City and Appellant after
- 11 Original Hearing
- 12 Exhibit 13 City Council's Approval to Refer Appeal to a
- 13 Hearing Officer
- 14 Exhibit 14 SERRF Project Data
- 15 Exhibit 15A KEY DISPOSAL INC./JOHN KATANGIAN Letter to City Department
- 16 of Public Works(08-03-1999)
- 17 Exhibit 15B City Refuse Field Investigation for 2012 Re KEY
- 18 DISPOSAL INC (Notebook)
- 19 Exhibit 16 SERRF TICKETS 2010 and 2011 Re KEY DISPOSAL INC
- 20 Exhibit 17 CITY COUNCIL LETTER OCTOBER 20, 2009 - ORDINANCE NO.
- 21 ORD-09-0033

21 Appellant KEY DISPOSAL INC (KEY DISPOSAL)'s counsel, Thomas A. Nitti,
22 objected to Exhibits 14, 15A, 15B, 16 and 17 on several grounds. I will
23 state each objection and discuss it. I will quote from the LBMC, as
24 applicable, as I go along, as well.

25 Mr. Nitti objected that all Exhibits comprised new or additional
26 evidence of prohibited nonrecyclable refuse hauling by KEY DISPOSAL which was

27 HEARING OFFICER'S RECOMMENDATION AND FINDINGS

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1 not presented by City at the KEY DISPOSAL's original license revocation
2 hearing and therefore improper under LBMC 3.80.429.5.

3
4 LBMC 3.80.429.5 - Appeal of license revocation, provides, as follows:

5 "Any licensee whose license is revoked under this chapter shall
6 have the right . . . to file a written appeal to the city council.
7 Such appeal shall set forth the specific ground or grounds on which it
8 is based. The city council shall hold a hearing on the appeal
9 At the hearing, the appellant or its authorized representative shall
10 have the right to present evidence and a written or oral argument, or
11 both, in support of its appeal. The determination of the city council
12 on the appeal shall be final."

13
14 In appellant's appeal (Exhibit 12), a specific ground for this appeal
15 is set forth by Mr. Nitti, as follows:

16 "6) The proof supplied at the hearing showed one ambiguous pickup of
17 trash, since only the top of the trash bin was photographed (Exhibit
18 7). Appellant should not have his license revoked for only one
19 instance of an unpermitted pick-up which was ambiguous at best."

20
21 Appellant John Kantangian and Mr. Nitti both responded to questions I
22 posed at this hearing, that would lead a reasonable person to believe that
23 KEY DISPOSAL was only involved in this single instance of prohibited refuse
24 (nonrecyclable waste) hauling. In fact, appellant John Kantangian, admitted
25 that by looking at Exhibit 7 shown to him by Mr. Nitti, "it is my estimate
26

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1 that nonrecyclable waste and recyclable material are 50%/50% in this photo of
2 the top of the trash bin."

3 LBMC 8.60.080 - Refuse transportation permit - Required, provides as follows:

4 "A. Any person who intends to remove or convey any nonhazardous,
5 noninfectious refuse for hire within the City shall first apply
6 for and receive a permit in writing from the Director of Public
7 Works in accordance with the applicable provisions of this
8 Chapter 8.60. B. There shall be two classes of refuse
9 transportation permits:

10 1. Recycling Permit: For the removing or conveying of
11 nonhazardous, noninfectious source separated materials, with
12 less than ten percent nonrecyclable waste, as part of the
13 recovery/recycling process:

14 2. General Permit: For the removing or conveying of all other
15 nonhazardous, noninfectious solid waste"
16 (nonrecyclable waste/refuse - my *emphasis added*)

17 At the hearing, I heard and looked at all oral and documentary evidence
18 submitted by City, and took under submission Mr. Nitti's objections. I
19 hereby overrule Mr. Nitti's objections to Exhibits 14, 15A, 15B, 16 on the
20 ground that they comprised new or additional evidence of prohibited
21 nonrecyclable refuse hauling by KEY DISPOSAL which was not presented by City
22 at the KEY DISPOSAL's original license revocation hearing and therefore
23 improper and inadmissible under LBMC 3.80.429.5. While said evidence may be
24 objectionable on other grounds set forth by Mr. Nitti, I believe that this
25 evidence is relevant to this administrative hearing and appeal of KEY
26 DISPOSAL recycling license revocation. The City should be permitted to rebut

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1 or impeach appellant's seeming assertion that only one such instance of KEY
2 DISPOSAL impermissible hauling of nonrecyclable refuse which was "ambiguous"
3 (whether the City picture of the KEY DISPOSAL trash bin (Exhibit 7) showed in
4 excess of 10% recyclable refuse took place. It is arguable that the City *may*
5 *not directly bring in such new evidence to support KEY DISPOSAL license*
6 *revocation*, and as to that I might be inclined to agree. However, I do not
7 believe that occurred here.

8 Mr. Nitti also objected that Exhibit 17 - CITY COUNCIL LETTER OCTOBER
9 20, 2009 - ORDINANCE NO. ORD-09-0033 unconstitutionally on equal protection
10 grounds impermissibly promoted the limitation of City nonrecyclable refuse
11 hauling licenses to 16. Nitti asserted that it was impossible for appellant
12 to operate under a nonrecyclable refuse hauling license that the City would
13 not issue. I don't believe that any strict scrutiny of the City's policy is
14 called for here. First, City of Long Beach, Department of Public Works,
15 Environmental Services Bureau - Dikran (Diko) Melkonian, General
16 Superintendent of Operations testified that there is no such written policy
17 to limit such nonrecyclable refuse hauling licenses to 14 or 16. Second, I
18 don't believe that KEY DISPOSAL application for a nonrecyclable refuse
19 hauling license and its failure to obtain one disclosed any sort of suspect
20 unconstitutional profiling, such as racial, for example. Melkonian testified
21 that he's been at the position for over 13 years and that "yesterday (August
22 29, 2012) is the 1st and only time that KEY DISPOSAL called my department to
23 apply. My staff told appellant that the City isn't issuing anymore
24 nonrecyclable refuse hauling licenses at this time." The "current number of
25 nonrecyclable refuse hauling licenses issued is 15 and this is adequate."
26 Melkonian has discussed this number with the City Council and Director of

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1 Public Works. ORDINANCE NO. ORD-09-0033 also speaks of private refuse hauler
2 (nonrecyclable)permits, being responsible to provide a recycling program.
3 So, it seems the refuse hauler(nonrecyclable) has different rights and
4 responsibilities than a **refuse hauler recycling only** as KEY DISPOSAL enjoys.
5 Since, KEY DISPOSAL only has a recycling license BU20919340, that discussion
6 need not involve us further here.

7 In his written appeal (Exhibit 12), appellant claims that he used to
8 have such a nonrecyclable refuse hauling license, which lapsed many years
9 ago. Mr. Nitte wrote KEY DISPOSAL attempts to reinstate the permit "has been
10 denied repeatedly. For some mysterious reason, other haulers have received
11 licenses, even though appellant has been patiently waiting in line." I note
12 that appellant provided no further written or oral evidence to corroborate
13 this ground of appeal.

14 Mr. Nitti objected to Exhibits 14, 15A, 15B, 16 on the ground that they
15 comprised new or additional evidence of prohibited nonrecyclable refuse
16 hauling by KEY DISPOSAL on grounds of hearsay, lack of authentication as
17 business records or official records, and best evidence. While I note that
18 hearsay is not a strong objection to make in an administrative hearing and
19 that Nitti's earlier objection as to such evidence not being presented at the
20 original license revocation hearing may have had more merit, I will address
21 those objections, in order to thoroughly discuss their merits.

22 Mr. Melkonnian attested to the SEERF Tickets (Exhibits 14 and 16), as
23 documents that he has seen and been familiar with during his 13 plus years in
24 this Department. Melkonnian explained that the Southeast Resource Recovery
25 Center(SEERF) is where the City of Long Beach sends its nonrecyclable trash
26 to be incinerated and converted to electricity. The residue from this

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1 process is taken landfills to be used as roadway base. Each year, the
2 residents and businesses in Long Beach throw away approximately 369,000 tons
3 of residential, commercial, and industrial waste. To help dispose of all of
4 this trash, the City of Long Beach has an extensive recycling program that
5 also helps reduce the amount of trash it sends to SERRF.

6 Melkonnian testified that he knows KEY DISPOSAL for its "reputation" as
7 an unlicensed nonrecyclable trash hauler. Melkonnian stated that he recalls
8 that other than for the KEY DISPOSAL inquiry as to a nonrecyclable trash
9 hauling license, he's only been aware of KEY DISPOSAL annually renewing its
10 recyclable trash hauling license.

11 Accordingly, I admit the SERRF Tickets (Exhibits 14 and 16 and overrule
12 appellant's objections, as stated.

13 Additionally, City of Long Beach, Department of Public Works,
14 Environmental Services Bureau -Norma Palomera, Refuse Field Investigator
15 testified as to Exhibit 15B - City Refuse Field Investigation for 2012 Re KEY
16 DISPOSAL INC (Notebook). Ms. Palomera conducted recorded photographic
17 inspections of filled trash bins at different locations serviced by KEY
18 DISPOSAL, where she found little or no evidence of recycling, as follows:

19	July 6, 2012	Jack In The Box
20		2101 E. Anaheim St., LB
21		1190 E. PCH, LB
22		3980 E. Ocean Blvd., LB
23		5150 Atlantic Ave., LB
24		
25	July 18, 2012& August 3, 2012	El Pollo Loco
26		3425 Anaheim St., LB

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1 August 3, 2012 2200 Clark Ave., LB
2
3 March 23, 2012 Chase Bank
4 June 15, 2012
5 June 22, 2012 940 Long Beach Blvd., LB
6
7 June 22, 2012 6300 E. Spring St., LB
8
9 August 17, 2012 3901 Atlantic Ave., LB
10
11 June 22, 2012 O'Reilly Auto Parts
12
13 1350 Long Beach Blvd., LB
14
15 5151 Atlantic Ave., LB
16
17 6551 E. Spring St., LB
18
19 June 22, 2012 Burger King
20
21 2600 Long Beach Blvd., LB
22
23 2955 Bellflower Blvd., LB
24
25 July 27, 2012 99 Cents Store
26
27 2012 Long Beach Blvd., LB
28
29 July 27, 2012& 5599 Atlantic Ave., LB
30 August 17, 2012
31
32 August 10, 2012& American Golf
33 August 15, 2012
34
35 2400 Studebaker Rd., LB
36
37 August 10, 2012 Marriott Hotel
38
39 4700 Airport Plaza Dr.
40
41 August 10, 2012 Union Oil 76 Gas Station
42
43 3495 South St., LB
44
45 June 22, 2012 LB South Downey LLC (Shopping Center)

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1 5802-5820 Downey Ave., LB

2 3553-3559 South St., LB

3 3553-3559 South St., LB

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5 Mr. Nitti thoroughly cross-examined Ms. Palomera as to how she put
6 Put together Exhibit 15B and a matrix of Refuse Field Investigation findings
7 for each location. Both Deputy City Attorney Kendra Carney and Ms. Palomera
8 adequately laid a evidential foundation for Exhibit 15B to come in as a
9 business record. I find that Exhibit 15B has an indicia of trustworthiness
10 and credibility, necessary for an administrative hearing, as well. I admit
11 Exhibit 15B. However, I want to make it abundantly clear, that I am not
12 arriving at nor basing any Finding of Fact relative to the City supporting
13 the original hearing on revocation of KEY DISPOSAL business license number
14 BU20919340 on Exhibit 15B.

15 Exhibit Nos. 2, 3, 4, 6 and 15 was testified to by City of Long Beach,
16 Department of Financial Management - Eric Sund, Business Relations Manager,
17 who oversees all Business Licenses and Permits. Mr. Sund pointed out that
18 appellant had only applied for a Business License - Recycling (Exhibit 2)
19 which KEY DISPOSAL was issued BU20919340 - Mobile Services - Misc(Exhibit 3),
20 limited to Hauling Recycling Only (Exhibit 4). Mr. Sund referred to the City
21 Department of Public Works letter dated April 17, 2012, which he had signed,
22 where he admonished KEY DISPOSAL that it was hauling refuse without a Refuse
23 Transportation Permit, despite prior warnings not to do so and that he
24 expected it "to end service immediately." (Exhibit 6).

25 Mr. Sund went on to explain, as had Mr. Melkonnian, the process
26 required to obtain a Recycling license, as opposed to a Refuse (Nonrecyclable)

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1 License and asserted that appellant acknowledged that he understood in a
2 letter by KEY DISPOSAL INC to Department of Public Works dated August 3, 1999
3 (Exhibit 15A). Mssrs. Sund and Melkonnian also related as to how the
4 nomenclature of "permit" or "license", "hauling" or "recycling" had been
5 developed over the years, but that it was always clear that hauling
6 recyclable trash and hauling nonrecyclable trash required different permits
7 or licenses, specified as either.

8 III. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY APPELLANT KEY DISPOSAL

9 Appellant KEY DISPOSAL only introduced one Exhibit A - CITY RESOLUTION
10 NO. RES-09-0119, which was remarkably similar to City Exhibit 17, in that
11 both refer to refuse hauler (nonrecyclable) fees. Mr. Nitti submitted that
12 KEY DISPOSAL is unconstitutionally being singled out on equal protection
13 grounds, by having its refuse hauler license (recycling) revoked because KEY
14 DISPOSAL allegedly hauled nonrecyclable trash without the proper permit. But
15 all of this issue is discussed above and will not be rehashed here.

16 IV. STATEMENT OF ISSUES BEFORE THE HEARING OFFICER

17 The issues in this matter are, as follows:

- 18 1. May the **hauling recycling only** licensee KEY DISPOSAL INC BU20919340
19 be revoked for a single instance of hauling nonrecyclable trash?
- 20 2. Is any lesser penalty that revocation warranted based on the
21 evidence presented by City and appellant?

22 V. DISCUSSION OF PROFFERED EVIDENCE

23 I admitted all evidence, subject to the weight I would assess such
24 evidence, submitted by both appellant KEY DISPOSAL and respondent City of
25 Long Beach. True and correct copies of the respective Book of Exhibits are
26 on file with the City Clerk, and both parties should have their own copies.

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1 All such written evidence submitted is referred to by this reference,
2 and incorporated herein as if set forth in *haec verba*.

3 As I stated earlier, I clearly do not believe the SEERF Tickets and
4 City Refuse Field Investigation for 2012 Re KEY DISPOSAL INC evidence may be
5 used to directly support the subject original license revocation of KEY
6 DISPOSAL. However, I do feel comfortable in addressing such evidence in
7 aggravation of KEY DISPOSAL's license revocation. Appellant had the
8 opportunity, but presented no evidence in mitigation, nor to challenge or
9 rebut said evidence.

10 Deputy City Attorney Kendra Carney put it aptly, when I asked her
11 whether or not she felt a lesser "penalty" than license revocation was
12 justified by the evidence presented. Carney said: "KEY DISPOSAL's violations
13 of its business license were too blatant." Indeed, I think it may be felt by
14 the City that KEY DISPOSAL flaunted the City regulations under the recycling
15 license granted to KEY DISPOSAL.

16 17 VII FINDINGS OF FACT

18 A. John Katangian owns KEY DISPOSAL INC.

19 B. KEY DISPOSAL holds a business license by which it is authorized
20 Mobile Services - MISC- HAULING RECYCLING ONLY [BU20919340]

21 C. This hearing was conducted pursuant to written notice served upon
22 the licensee KEY DISPOSAL INC.

23 D. At all times herein, John Katangian and KEY DISPOSAL had actual
24 knowledge and constructive knowledge of unauthorized hauling of nonrecyclable
25 trash which took place.

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1 VI. RECOMMENDATION

2 In these premises, the recommended decision is that the instant appeal
3 of revocation of business license BU20919340 issued to KEY DISPOSAL INC be
4 denied.

5 Respectfully submitted,

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7 DATED: September 14, 2012 /S/ Alexander M. Dai

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