

PAHRUMP TOWN BOARD MEETING
BOB RUUD COMMUNITY CENTER
150 NORTH HIGHWAY 160
TUESDAY – 7:00 P.M.
April 28, 2009

AGENDA ADDENDUM

Discussion and possible decision to resubmit and revise and reconsider Pahrump Town Ordinance #43 (PTO #43). (Action)

A quorum of Advisory Board members may be present at any Town Board meeting but they will not take any formal action.

Any member of the public who wishes to speak during public comment or on an agenda item, at the appropriate time, will be limited to three (03) minutes.

Any member of the public who is disabled and requires accommodations or assistance at this meeting is requested to notify the Pahrump Town Office in writing, or call 775-727-5107 prior to the meeting. Assisted listening devices are available at Town board meetings upon request.

This notice and agenda has been posted on or before 9:00 a.m. on the third working day before the meeting at the following locations:

PAHRUMP TOWN OFFICE
COMMUNITY CENTER
TOWN ANNEX
COUNTY COMPLEX
FLOYD'S ACE HARDWARE
CHAMBER OF COMMERCE



Memorandum

To: TOWN BOARD
From: Lance Maiss/Armstrong Teasdale, LLP
Date: April 21, 2009
Subject: PTO 43 REVISIONS – RESPONSE TO REVISIONS RECOMMENDED BY ROBIN LLOYD AT APRIL 14, 2009 MEETING

Although PTO 43 had previously been adopted by the Town Board, at the meeting on April 14, 2009, the Town Board revisited PTO 43 and addressed proposed revisions by Robin Lloyd. While quite a few of the proposed revisions were grammatical or revised wording for clarification purposes, other proposed changes were substantive and/or challenged by Ms. Lloyd on a legal basis. This memo addresses the latter changes.

Mandatory Service

In Section 43.060(A), language was added to the requirement of mandatory service for any resident connected to electrical service by requiring a condition that a complaint be made by an identified neighbor. This suggested language creates two problems: (1) it would be contrary to the ordinance (Section 43.070); (2) it would be contrary to state law (NRS 444.610, NRS 444.630); and (3) makes no sense, in that a neighbor may not complaint, but clear violations for failing to properly dispose of the solid waste are occurring. Instead, we suggest that the language be revised to allow the Town to determine (as it already is required to do) whether a resident is in violation, which would then trigger the requirement of mandatory service.

Service for No Charge

Section 43.060(E) was deleted, likely due to the language that overlaps with the allowance of self-hauling for no compensation. With the exception of credits, refunds, or tax exempt status, this section prohibits the franchisee to provide, and no person to accept, services at no charge, thus preventing disparate treatment amongst residents. While do not find this section to be of great importance, the Town Board and the franchisee may wish to reconsider keeping the provision, but revising it in such a way to avoid any confusion regarding the allowance self-hauling for no compensation.

Self-Hauling

In Sections 43.060(F)(3) and 43.090(B) and (C), language addressing self-hauling was revised to allow self-hauling solid waste of family, friends and neighbors as long as it was not for profit. We find that “profit” is too narrow a term and suggest using the broader term “compensation” or “consideration” instead. We foresee (as does the franchisee) residents self-hauling for one another in exchange for something other than money, thus circumventing the spirit and intent of the ordinance and subsequent franchise agreement with the franchisee. “Compensation” or “consideration” should be understood to be anything of value in exchange for the self-hauling.

Requirements for Carts and Vehicles

Section 43.120 was recommended to be removed entirely. It appears that the concern was that self-haulers would be required to comply with the requirements for use of vehicles to haul the solid waste. However, this provision makes sense, at least for the franchisee that is hauling large amounts of solid waste. Moreover, this provision is similar with that of Nye County Code 8.24.150. Thus, we suggest keeping the provision but adding the limitation that the provision applies to the “franchisee.”

Lien Rights for Failure to Pay

Section 43.260 was essentially deleted and replaced to specifically indicate that there would be no lien rights, with reference to AGO 99-24 (July 20, 1999) and AGO 111 (January 29, 1977). First, with respect to AGO 99-24, this opinion does not address the lien right issue at all. All it does do is reference AGO 111 as authority for an issue other than the lien right issue. Thus, it is not clear what application, if any, it has to the lien right issue. Second, with respect to AGO 111, this opinion back in 1977 did actually conclude that there was no statutory authority for unpaid fees to become a lien upon the realty. However, NRS 444.520 was amended by the Legislature in 2005, adding a new provision that specifically provided that “until paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served...” In committee hearings regarding the aforementioned amendment, the core rationale was that for health reasons solid waste disposal services cannot be discontinued if the consumer fails to pay. Thus, the solid waste is collected regardless of payment, leaving the municipality or its franchisee very little enforcement power. As a result, lien rights were statutory created in NRS 444.520, rendering AGO 111 obsolete. Since Section 43.260 simply states what rights the franchisee (and Town) have to enforce payment under state law, it is recommended that the provision be maintained.

Penalties for Violations

Section 43.320 provides for certain penalties for violations of the ordinance. These penalties have been challenged as too onerous, with suggested changes amounting to warnings and notices, and a fine after a third offense. However, these penalties were consistent with those set forth in Nye County Code 8.24.660. Although we could find no specific Nevada law regarding conflicts between Town code and County code, the Nevada Supreme Court has held that such a conflict between a county code and state statute falls in favor of the state statute. See, *Falcke v. Douglas County*, 116 Nev. 583, 588, 3 P.3d 661, 664 (2000)(recognizing that because counties

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obtain their authority from the legislature, county ordinances are subordinate to statutes if the two conflict). Additionally, we note that for town advisory boards, NRS 269.590(1)(b) requires that a recommended ordinance or code not be less stringent than similar county code. By analogy, we believe that the Town code cannot be less stringent than the county code with respect to penalties for violations of solid waste handling. Therefore, we recommend that the Town maintain the same or more stringent penalties in Section 43.320.

LM

Cc: Bill Kohbarger

The Groesbeck Group, Ltd.
Attorneys and Advisors

April 24, 2009

hmaiss@armstrongteasdale.com

Lance P. Maiss
Armstrong Teasdale, LLP
50 West Liberty, #950
Reno, Nevada 89501

Re: Our Client: Pahrump Valley Disposal, Inc. (PVD)
Your Client: Town of Pahrump (Town)
Comments to proposed administrative revisions to Pahrump Town Ordinance No.
43 (PTO 43)

Dear Mr. Maiss:

Thank you for your April 22 draft version of PTO 43. I have had an opportunity to review the draft language with my client, and offer the following comments.

43.020 Definitions – Although PVD generally has no objection to insertion of the term “compensation” into the document, that term does, in fact, have significant meaning and, therefore, should be a defined term. We recommend that the document be revised to incorporate a specific definition for “Compensation.”

“Compensation” means payment of any kind in exchange for a service provided, including the giving of an equivalent or substitute of equal value for any service rendered, whether in payment, salary, fee, or any other measure of value, offered in exchange or otherwise conferred.

[A] – PVD has no objection to the proposed revision.

[B] – PVD has no objection to the proposed language with incorporation of the definition of Compensation, as noted above. Likewise, PVD has no objection to the change deleting the word “enforcement” and inserting the word “corrective.”

[D] – As indicated, PVD has no objection to the insertion of the word “Compensation” with the caveat that it be a defined term.

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43.060 (A) – PVD has no objection to deleting the words “electrical service,” but does believe that some sort of reference to a utility hookup should be included. We propose that the paragraph simply be revised to reflect one’s connection to a “utility service.”

The proposed language regarding complaints from neighbors is simply too broad and would present numerous service and administrative problems. The existing language should remain in place.

(B) – PVD believes the existing language should remain as is. It would be difficult, if not impossible, in most instances to secure payment of a service fee against non-owners. Responsibility for garbage collection service is best addressed in lease agreements between owners and tenants. Given the transient nature of such occupancies, it would be virtually impossible for PVD to hold renters accountable for their service obligations. Accordingly, this section should remain in place as currently adopted.

(D) – As indicated above, PVD has no objection to deletion of the words “electrical service,” but the proposed change of proof to “no mail was delivered” creates an even greater ambiguity. As recommended above, the reference to a “utility service” would appear preferable.

As for the request that self-hauled solid waste occur at least every “twenty-one [21] days,” PVD has no objection to this language.

(E) – PVD is not opposed to the deletion of this subpart.

(F)(3) – Although PVD can agree to the language providing for hauling of solid waste of one’s “family, friends, or neighbors residence,” and incorporation of the word “Compensation,” again, with the caveat that it is done so as a defined term, the reference to “premises” needs to be revised. As you are aware, the word “premises” is a defined term and includes commercial lots and buildings. As we discussed, PVD has no objection in allowing residents to self-haul in accordance with the proposed revisions; however, at no time did it contemplate such activities in a commercial context. Accordingly, we request that paragraph 3 be revised to read as follows:

Any person from self-hauling solid waste generated at his or her own single-family residence or generated at his or her family’s, friend’s, or neighbors’ single-family residence, provided that such person does not receive compensation for such hauling;

(F)(4) – This paragraph should be revised as follows:

Any person from not subscribing to solid waste collection service for his or her single-family residence if:

- a. Such single-family residence is not inhabited either full-time or part-time, or
- b. Such person is self-hauling all solid waste generated at his or her single-family residence to a duly licensed and permitted disposal facility. . . .

As addressed in subpart A above, the language attempting to tie subscription to service to complaints is confusing and would present a compliance nightmare for PVD and the Town. As stated, PVD has no objection to deleting the words “electrical service,” as long as the words “utility service,” (or something similar) are included. PVD believes the proposed complaint language, as stated above, creates more ambiguity than the existing language does. We have no objection to the “twenty-one [21] days” change, as mentioned.

43.070 (B) – PVD generally has no objection to the proposed revision. It remains our position, however, that reference to “another person” should remain in the document. Without that language, individuals would arguably be free to deposit their solid waste in other person’s containers, which actions would clearly violate the spirit and intent of PTO 43. Accordingly, we recommend the language be revised to read as follows:

Throw or deposit, or cause to be thrown or deposited, any solid waste, hazardous waste, or recyclables upon the public or private property or premises or into the container of any other person, business, or entity within the Town, unless the container is designated for public use, except as may be provided in this chapter.

(F) – This section should be revised to read as follows:

Hire, contract, or pay compensation for the services to any unlicensed hauler to collect, transport, or dispose of solid waste.

43.090 – The proposed insertion of the words “it is” in the first paragraph of this section should be deleted, as the words are confusing and unnecessary.

[B] – This section should be revised to read as follows:

Any person may directly deposit his or her own solid waste or that of his or her family, friends, or neighbors, to a duly permitted transfer station or a disposal site operated by the Town or its franchisee, so long as that person is not compensated in any manner for doing so.

43.090 [C] – We recommend that this subpart be revised to read as follows:

Any person may directly transport source-separated recyclables of his or her family, friends, or neighbors, to recycling centers or drop-off centers, as long as that person does not receive any compensation for doing so.

43.100 [C](2) – PVD has no objection to these proposed revisions.

43.120 – There has been a recommendation to delete this section in its entirety. We believe that this request is inappropriate, and that the language as currently adopted should remain in full force and effect. The attempt to limit the language to the franchisee [PVD] appears to miss the point. The language is designed not only to insure that PVD adheres to the requirements of NRS Chapter 484, but to impose a burden upon all persons hauling solid waste to adhere to the mandates of that statute. It is unfair to require that PVD adhere to such standards while relieving other haulers from the stated restrictions. Moreover, as the exclusive franchisee, PVD is left with the responsibility of cleaning up the litter and debris placed upon the roadways as a result of other haulers' inability and/or refusal to meet these requirements. As such, we strongly recommend that the language currently in effect remain in place.

43.130 – The proposed language is confusing and awkward. The proposed deletion of the word "premises," which is a defined term, simply creates more ambiguity. For instance, limiting the provision to businesses severely restricts the scope of the requirement. Second, it creates an inference that businesses may not be required to subscribe to solid waste disposal service, which is clearly contrary to the meaning of the ordinance. Accordingly, we recommend that the language currently in place remain as is.

43.220 – As a preliminary note, it appears that the existing ordinance starts with subpart B, which should be revised to properly reflect its designation as subpart A and that the remaining subparts be revised accordingly.

Lance Maiss
April 24, 2009
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[C] – This subpart should be revised to properly reflect that it is subpart B. PVD otherwise has no objection to the proposed revisions in this subpart.

43.260 – The proposed revisions are contrary to the Nevada Revised Statutes, and the language currently in place meets the requirements of Nevada law, particularly as relates to the placement of liens. It should, therefore, remain in full force and effect.

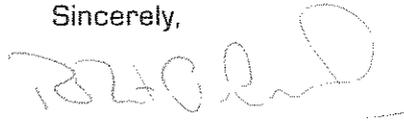
43.290 [B] – PVD has no objection to this proposed revision.

43.320 – As the proposed revisions deal with the Town's authority to enforce the provisions of PTO 43, PVD will defer to the Town on these proposed changes.

Should you have any questions regarding the above, please feel free to give me a call. It would appear that all the proposed revisions above are simply stylistic in nature and do not represent a substantive change to PTO 43. If this does not meet with your understanding, please let me know immediately. PVD has worked diligently for several years now to ensure that the amended Ordinance is fair, reasonable, and meets with mandates of federal and state law relating to the collection of solid waste.

I appreciate having the opportunity to comment on your April 22 draft, and look forward to working with you and the Town Board in addressing these housekeeping changes at the next Town Board meeting.

Sincerely,



Robert A. Groesbeck

RAG/idh

c: Pahrump Valley Disposal