



CITY OF HOUSTON
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April 17, 2019

The Honorable Jose Lozano
Members of the House Environmental Regulation Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Chairman Lozano and Members of the Committee,

The City of Houston (Houston or City) appreciates the opportunity to testify in opposition to House Bill 4344 (HB 4344) relating to the payment of certain fees to municipalities by entities that hold municipal solid waste management service contracts.

House Bill 4344 limits the amount the City of Houston may charge solid waste management service operators to two percent of the gross receipts of the franchisee for the sale of services in the municipality.

Solid waste management operators, who provide services in Houston, profit from the use of the public right-of-way and have been paying 4 percent of gross receipts to the City of Houston for the use of the public asset since 2003. When the City implemented the fee in 2003, we did not set the fee arbitrarily. We looked at other franchise agreements that spoke to the fair market rental value of the right-of-way. As you know, the Texas Constitution has long required valued-based rental fees for use of public property. The Texas Constitution, art. III, § 52 (a) and art. XI, § 3, prohibits the State and other governmental entities (e.g., cities) from making “gifts of public property.” A gift includes allowing *the use of public property to any entity for less than market value*. Tex. Atty. Gen. Op. DM-232 (1993).

When we conducted our fair market rental review, the other franchise agreements were at 4 and 5 percent depending on the scope of use. Thus, we invited stakeholders to draft the regulations with us, and after several months of collaborative work, we arrived at the Solid Waste Franchise structure and 4 percent fee that is expressed in Chapter 39 of the City of Houston Code of Ordinances. We worked with industry stakeholders to create a regulatory framework that works for solid waste haulers as well as our citizens. As a result of our inclusive work with industry members, the City of Houston currently holds franchise agreements with 237 waste hauling companies that operate within the city limits. In the 16 years that this ordinance has been in place, we have received no complaints from the industry or the public about the franchise fee rates or the services provided.

Texas cities spend billions of dollars each year maintaining the public right-of-way for the health, safety, and the benefit of all who use it. Under the proposed amendments, the franchise fees received by the City would be halved to only 2 percent, and would reduce the City’s revenue by approximately \$4 million annually, directly impacting even the City’s own solid waste operations.

In addition to Houston, other cities in Texas collect franchise fees higher than 2 percent from solid waste haulers. The proposed bill dictates what all cities in Texas should receive in remuneration for a public asset, without any *rational basis* for limiting the franchise fee two 2 percent. This one-size-fits-all approach purports to arbitrarily set the value of all municipal right-of-way for every municipality that currently has a franchise fee above 2 percent.

Any reduction in public right-of-way compensation is an illegal gift of public property and threat to the public right-of-way as well as the residents, cities, and companies that use it.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'TP', is written over a horizontal line.

Tina Paez, Director
City of Houston
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