

TDS' Justification for Intervening

TDS has intervened in the lawsuit between Captain Hook and the City of Austin in support of the City because TDS believes the City of Austin's regulatory and license fee system under the City Code, Chapter 15-6, Article 3, Private Solid Waste Collection Service is legal and defensible. Texas case law says if the primary purpose of the truck and container fees are to pay for the City's waste regulatory program, then it is a constitutional license fee. However, if the truck and container fees raise more revenue than the reasonable cost of regulating the waste industry, it is an unconstitutional occupation tax. For the City's costs to be reasonable there must be some rational relationship between costs incurred by the City and the legitimate goal of the licensing ordinance.

For example, TDS understands the City received approximately \$826,000 in revenue from the truck and container fees last year. Therefore, the City must spend at least that amount on regulating the waste industry for these fees to be constitutional. TDS' position is that if the City added all costs that are rational related to regulating the waste industry, it would exceed \$826,000 per year.

Examples of costs attributable to regulating the waste industry in the City include the following:

- Solid Waste Services personnel used in the program
- Code Enforcement personnel
- Police services used in enforcement
- Fire and EMS Services for response to waste transportation incidents
- Remediation costs of illegal dump sites created by rogue waste haulers
- Road maintenance for damage caused by waste transport vehicles
- Clean-up of wind blown debris from waste transport vehicles
- Audits to measure compliance
- Waste transport vehicle inspections
- Waste container inspections
- Waste processing and disposal facility inspections
- Administrative overhead

TDS believes if the costs of the above activities that relate to the City's waste regulatory program are added together, it would far exceed the \$826,000 of revenue generated last year. Therefore, the City's current program is legal and defensible as it exists today.

TDS' position is further supported by evidence in a case by waste haulers challenging the constitutionality of the City of San Antonio's waste regulatory program. In that proceeding, San Antonio submitted summary judgment evidence of the cost of overseeing a waste regulatory program similar to Austin's is approximately \$3 million. Therefore, TDS is ready to devote its expertise and resources to assist the City in the court challenge to its regulatory and license fee system.