

109.0417 Procedures for a local government's change of solid waste management service providers or award of a new franchise for provision of solid waste management services.

- (1) (a) A local government shall not:
 1. Commence solid waste management services that would have the effect of prohibiting a service company from continuing to provide services that it was providing prior to commencement of services by the local government; or
 2. Award a franchise for solid waste management services where no franchise exists;unless the local government complies with the requirements in this section.
 - (b) Paragraph (a) of this subsection shall not apply to:
 1. The renewal, according to its terms, or replacement, upon its expiration, of an existing franchise;
 2. The expansion or extension of urban services related to residential waste management services for single-family or two (2) family dwelling units by an urban-county government pursuant to KRS Chapter 67A, so long as the urban-county government:
 - a. Holds at least one (1) public hearing and provides written notice to all service companies registered within the urban-county government no later than ten (10) days prior to the scheduled public hearing; and
 - b. Provides written notice to all service companies registered with the urban-county government no later than ten (10) days after:
 - i. Receiving a petition to extend urban services;
 - ii. Mailing voting cards to proposed service recipients regarding the petition so long as the written notice contains the date that voting cards are to be returned by the recipient; and
 - iii. Making a final determination; or
 3. The initial issuance of a franchise by a local government for the provision of solid waste management services following a period where the local government has exclusively provided the same solid waste management services in the same or any portion of the same solid waste management area in which the initial franchise issuance is proposed.
- (2) Not less than one hundred eighty (180) days prior to making a final determination to take an action described in subsection (1)(a) of this section, a local government shall send written notification by certified mail to the local Kentucky address of all service companies providing solid waste management services within the solid waste management area where the action is proposed to occur that:
 - (a) Describes the proposed action in detail;
 - (b) Provides the date, time, and location of the public hearing required pursuant to subsection (3) of this section; and

- (c) Designates a responsible official within the local government to be available to personally communicate with any service company regarding the particular details of and rationale for the proposed action, including but not limited to the economic and employment consequences of the proposed action.
- (3) No sooner than forty-five (45) days but within one hundred eighty (180) days following the written notice required under subsection (2) of this section, the local government shall:
- (a) Hold one (1) public hearing that is advertised to the public in accordance with KRS 424.130 for the purposes of:
 - 1. Describing the proposed action, including but not limited to the economic and employment consequences of the plan; and
 - 2. Accepting written comments from the public and service companies regarding the proposed action; and
 - (b) Accept additional verbal and written comments regarding the proposed action for no less than thirty (30) days following the public hearing described in paragraph (a) of this subsection.
- (4) No later than sixty (60) days following the close of the public comment period described in subsection (3) of this section, the local government shall prepare a summary of all comments, and the local government's response to each comment, received at the public hearings. The local government shall send, by certified mail, the summary and response to any service company that has submitted comments and make the summary and response to comments available to the public as an open record.
- (5) (a) If a local government makes a final determination to take an action described in subsection (1)(a) of this section, the effective time for the action shall be governed by this subsection.
- (b) For actions described in subsection (1)(a)1. of this section, the action shall take place no sooner than eighteen (18) months following the local government's final determination.
- (c) For actions described in subsection (1)(a)2. of this section, the franchise award shall be effective no sooner than twelve (12) months following the local government's final determination.
- (d) This subsection shall not apply to actions taken by a county or solid waste management district pursuant to KRS 109.059.
- (6) If a local government makes a final determination to take an action described in subsection (1)(a) of this section, the final determination shall be made no later than three hundred sixty-five (365) days from the date of the notice required pursuant to subsection (2) of this section.
- (7) If a local government submits a bid or proposal to perform solid waste management services in competition with a service company, the local government shall incorporate in its bid or proposal all elements that are required of bids from service companies for the same services.
- (8) For actions described in subsection (1)(a)1. of this section, nothing in this section

shall be interpreted to preclude a local government and the service company or companies impacted by the action from entering into an agreement that provides alternative terms and conditions to govern the rights of a local government and a service company or companies, including but not limited to a complete waiver of the requirements of this section.

- (9) This section shall not apply to actions taken by a local government:
- (a) To the extent necessary to mitigate conditions caused by a service company that are reasonably determined to threaten the health or safety of the residents of the community, or a material breach of a contract with the local government, after the service company has been given written notice and the opportunity to cure the condition. If the contract with the local government provides for the remedy associated with a breach of the contract, the terms of the contract shall take precedence over this paragraph; or
 - (b) That would result in the service company's loss of fifty (50) or fewer residential customers due to the action. A local government may only take one (1) action to which this paragraph applies every three (3) years.

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