

Construction Debris/Waste Hauling: Texas Supreme Court Addresses Validity of Municipality's Imposition of Gross Revenue License Fee



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The Supreme Court of Texas (“Court”) addressed in a May 20th opinion an issue arising out of certain licensing and related requirements imposed by a general-law municipality on a firm that removes solid waste (often denominated “construction debris”) from construction sites. See *Builder Recovery Services, LLC v. Town of Westlake, Texas*, 2022 WL 1591976.

The question addressed was whether The Town of Westlake, Texas (“Westlake”) had the authority as a general-law municipality to impose a percentage-of-revenue licensing fee on construction trash-hauling companies.

Westlake enacted Ordinance 851 in April 2018. The ordinance governed solid waste disposal services in Westlake. It included a section relating to construction trash haulers. Ordinance 851 required construction trash haulers to obtain a license to operate in Westlake.

Licensees’ obligations included:

- Identification of vehicles and containers
- Vehicle and container maintenance
- Insurance and recordkeeping
- Reporting requirements

A key requirement was the obligation to remit a monthly license fee of 15% of their gross revenue generated within Westlake to the town.

Builder Recovery Services, LLC (“BRS”) is a construction trash-hauling company operating in Westlake. It collects and removes solid waste from construction sites. This includes providing dumpsters for use during construction and hauling loaded dumpsters to landfills.

BRS is paid by private customers such as construction contractors engaged in residential new construction or remodeling.

BRS refused to comply with Ordinance 851. It filed suit in district court challenging the validity of Ordinance 851. The lawsuit included an allegation that Westlake, as a general-law municipality, lacked both the statutory authority to require BRS to obtain a license to haul construction waste and the statutory authority to impose a licensing fee based on a percentage of BRS’s revenue.

The district court agreed with BRS. It held the 15% license fee was invalid.

Westlake subsequently decreased the license fee from 15% to 3% of gross revenue. Its rationale for imposition of the 3% fee was described as:

. . . the administrative costs of regulation, enforcement, monitoring, and the associated impact to infrastructure resulting from solid waste transport services.

The Second Court of Appeals, Fort Worth, Texas, held that BRS's challenge to the fee was moot because Westlake had replaced the 15% fee with the 3% fee.

The Court reversed the appellate court's ruling. It held that the lowering of the fee did not render the case moot.

Westlake was held to lack the authority to impose a percentage-of-revenue licensing fee of any size. Therefore, the fee structure was tethered only to the market price of trash-hauling services as opposed to Westlake's cost of regulating.

The Court suggested that Westlake probably could have implemented a more conventional, volume-based fee under which Westlake charged fixed amounts per license application or per construction site to cover Westlake's cost of regulation. It remanded the issue to the appellate court as to whether the remainder of Ordinance 851 could be severed from the invalid fee and stay in place.

Therefore, the Court ruled that Westlake lacked the authority to impose this percentage-of-revenue licensing fee on construction trash-hauling companies.

A copy of the Opinion can be downloaded [here](#).