



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 2-16-06

Approved

Date

2/24/06

**SUBJECT: COMMERCIAL SOLID WASTE COLLECTION SYSTEM: PROGRAM REDESIGN**

## RECOMMENDATIONS

- Accept this staff report regarding the status and issues concerning the City's Commercial Solid Waste Collection System.
- Approve Phase I policy direction concerning minor improvements and adding limited enforcement tools to the existing system and direct staff to return with recommended actions for implementation.
- Direct staff to investigate Phase II concepts regarding the redesign of the commercial solid waste collection system and the Clean and Green Downtown program and return with information and recommendations regarding actions for implementation.

## EXECUTIVE SUMMARY

The City's Commercial Solid Waste Collection system is a non-exclusive system whereby hauling companies may apply for a Commercial Franchise to provide collection services from businesses in San Jose. There are currently 26 companies operating with Commercial Franchises. The Commercial Franchise Agreements expire June 30, 2006 and there are no provisions in San Jose Municipal Code (SJMC) or the Franchise Agreements to extend them further. Environmental Services Department (ESD) has developed Commercial Solid Waste Collection System change recommendations to improve services to the business community, support the City's environmental goals, and provide tools to improve administration of the system and stabilize revenue flow. These changes will require amendments to SJMC and new three-year Franchise Agreements, which will be presented to Council in May 2006 for approval. If no changes are made, the next opportunity to change the system may be 2011, as Public Resources Code requires a jurisdiction to provide a five-year notice to its non-exclusive haulers, and ESD last notified the haulers of anticipated system changes in 2001.

Implementation of the proposed changes will occur over two phases. Phase I is scheduled for the period July 1, 2006 through June 30, 2009. This term will include minor improvements to the system and allow time to investigate the feasibility of more significant changes in Phase II.

Phase II is scheduled to begin July 1, 2009. The primary change to be evaluated for Phase II is the creation of an exclusive "Clean & Green Downtown" collection district. ESD, Department of Transportation, San Jose Redevelopment Agency, Planning, Building and Code Enforcement, and the Downtown Association, have had preliminary meetings to discuss the Clean & Green Downtown concept and the types of services to be evaluated. In addition to solid waste and recycling, a single service provider would be responsible for: clean-up activities, street sweeping, public litter container collection and maintenance, general litter clean up, graffiti removal, and surface cleaning. Some of the anticipated benefits for businesses, residents, visitors to San Jose, and staff include: reduced air pollution, traffic, and noise; improved and integrated clean-up services, service accountability, and administration; and a cleaner downtown.

Staff will investigate Phase II concepts, coordinate with other departments and agencies, and return with information and recommendations regarding actions for implementation. Based on the results of the research and stakeholder inputs, the schedule for Phase II implementation can be accelerated.

The above noted actions are consistent with the direction provided by the City Council at their February 14, 2006 meeting regarding item 9.1 directing staff to provide short, medium and long term plans associated with downtown cleaning.

## **BACKGROUND**

### ***A. Types of Commercial Solid Waste Collection Systems***

Systems used by local governmental agencies to collect garbage from commercial generators can take a variety of forms. Examples of those forms include:

**Agency Hauler:** The local agency, using agency employees, provides the service to commercial customers in a defined service area. Cost for providing service may be part of general funded activities, or based on a fee for service charged to commercial customers.

**Contractual Hauler:** The agency retains the services of a hauler to provide services in a defined geographic area. Either the agency or the hauler charges the commercial customers in the service area.

**Non-Exclusive Franchise System:** An open market model where haulers can compete for business in a defined geographic area. The haulers charge the commercial customers in the service area and pay a franchise fee to the agency.

**Exclusive Franchise System:** A hauler is granted the right by the agency to have exclusive authority to collect material in a defined geographic area. Typically, the hauler charges the commercial customers in the service area and pays a franchise fee to the agency.

**B. *San Jose's Commercial Solid Waste Collection System***

The City of San José established a non-exclusive franchise system in 1995 to haul commercial solid waste (garbage and recyclables). Private haulers are required to obtain a Commercial Solid Waste and Recyclables Collection Franchise granted by the City Council that allows them to provide these hauling services.

The current Franchise Agreements grant the holders the right to compete with other franchisees to collect solid waste and commingled recyclables from non-residential properties in San Jose and to provide temporary debris box services to residences and construction sites. The franchise authorizes the holder to perform collection services only and does not constitute permission to operate a solid waste facility or recycling center.

The City provides no compensation to the franchised haulers. The franchised haulers receive compensation directly from their customers. Service charges are agreed upon between the hauler and the customer and are influenced by direct competition between haulers. The City does not regulate these charges. Businesses are free to choose the franchised hauler that offers them the service that best meets their needs.

Franchised haulers pay Franchise Fees to the City. The Franchise Fee is assessed on the franchised hauler for the privilege of collecting, transporting or disposing of commercial solid waste kept, accumulated, or generated in the City of San Jose. Per SJMC and their Franchise Agreements, Franchised haulers pay Franchise Fees to the City based upon the volume (total cubic yards) of solid waste service provided. The Franchise Fees go to the General Fund.

The franchisees also collect Source Reduction and Recycling Fees, referred to as the "AB 939 Fee", that are assessed by the City on the generators of solid waste. Per SJMC and the Franchise Agreements, the Franchised hauler is responsible for either collecting and remitting the AB 939 Fee to the City, paying the AB 939 Fee on behalf of the generator, or providing to the City sufficient information for the City to pursue collection of fees from the generator in the event the hauler is unable to collect the fees. Like the Franchise Fee, the AB 939 fee is assessed on the volume of solid waste service that a customer subscribes to (container size multiplied by frequency of collection). AB 939 Fees are used by the City's Integrated Waste Management (IWM) program to implement and manage its diversion activities under the State mandate.

Recyclables collection is also subject to Franchise and AB 939 fees, however, historically, this fee in San Jose has always been set at \$0.00. Not assessing fees for recyclables collection provides a financial incentive for commercial haulers and their customers to reuse or recycle and

divert materials from landfill disposal. This incentive is caused by decreasing the cost of recyclables collection relative to garbage collection.

In 2001, the City updated its Commercial Solid Waste Collection System with moderate changes and the City Council awarded new franchise agreements to the Commercial haulers. The term of the Franchise Agreements was two-years with an option for the City to grant one-year renewals each subsequent year for a period of three years, at the Environmental Services Director's discretion. Since the existing Franchise Agreements expire June 30, 2006 and there are no provisions in SJMC or the Franchise Agreements to extend them, new Franchise Agreements must be written and municipal code language adopted. While the commercial system has performed admirably, there are a few areas that should be improved, and this is the City's best opportunity to make those enhancements.

Also in 2001, ESD notified all of the existing franchised commercial solid waste haulers that the City may provide, or will contract for, exclusive solid waste collection services for the non-residential sector after June 30, 2006. The notification was issued pursuant to State of California Public Resources Code 49520, which requires a local jurisdiction to provide a five-year notice to haulers in a solid waste enterprise system if the jurisdiction plans to change the system from a non-exclusive basis. This notification requirement is referred to as the "5-Year Rule" and provides the City and haulers sufficient opportunities to evaluate other service and business model options for possible changes in 2006. There are currently twenty-six (26) collection companies that have active Franchise Agreements with the City that are scheduled to expire on June 30, 2006.

### **C. *Downtown Cleaning Enhancement***

Downtown cleaning-related services are presently provided under a number of service agreements managed by the City and private entities. Due to the City's General Fund situation, the level of City funded cleaning services has declined in the last few years.

Businesses in the downtown area, as represented by the Downtown Association, have expressed an interest in finding a way to enhance and maintain the level of cleanliness in the downtown area. The Association has been investigating the feasibility of developing a Property Business Improvement District (PBID) as a way to generate a funding source for activities that benefit the downtown business climate.

## **ANALYSIS**

**Timing:** The current Franchise Agreements have been in effect since July 1, 2001, and will expire on June 30, 2006. There are no provisions in the agreements or SJMC to extend or amend these agreements. The term of the Franchise Agreements coincides with noticing for the 5-Year Rule. Consequently, the City must either initiate system changes moving toward some form of exclusive system, or amend SJMC and the Franchise Agreements to continue the existing non-

exclusive system. The latter would also require the City re-notice on the 5-Year Rule and wait another five years for the opportunity to make necessary changes. Staff recommends initiating system changes in a phased approach to begin July 1, 2006.

**Franchise Management Tools:** Within the existing franchise system, few tools exist for staff to effectively resolve issues related to service provision, reporting, fee remittance, and other compliance issues. When a franchised hauler is out of compliance, the City's only recourse is to recommend Council terminate the Franchise. ESD's Director may also suspend a franchisee for non-compliance with reporting requirements of the Franchise Agreement. As both of these actions may result in significant service interruptions, terminations and suspensions should be reserved for the more serious violations and habitual violators. Staff recommends the implementation of Administrative Charges as management tools to increase hauler compliance as an intermediate step before termination or suspension. Examples for which Administrative Charges would apply include:

Customer Service:

- Ensure haulers' service agreements are in compliance with the City's Franchise Agreement and SJMC.
- Enable response to customer service and performance complaints in a timely manner.
- Ensure provision of recycling services if customers request recycling services.
- Ensure provision of educational materials to customers.

Operations:

- Address collections outside of approved times in or near residential areas.
- Prevent use of non-compliant vehicles on city streets.
- Address improperly labeled solid waste containers.

Reporting:

- Enhance accuracy and timeliness of reports to allow improved analysis of system activity and auditing.
- Address refusal to pay Franchise and/or AB 939 Fees.

**Phased Approach:** Staff has been evaluating the system and issues and is exploring short and long term solutions to provide for improved franchise management, stable revenue flow (fee collection), enhanced services, and a clean downtown. When implemented, these changes will benefit the business community, visitors and the haulers. Staff recommends a phased approach to implementing these changes and initiating the first phase of the system changes beginning July 1, 2006.

**Phase I: Beginning July 1, 2006 – June 30, 2009**

*Scope:* Staff recommends the term of the Franchise Agreements be for a three-year period from July 1, 2006 to June 30, 2009, during this first phase of system changes. Any Franchise Agreements granted by Council during that period would have a scheduled termination date of June 30, 2009. The initial changes outlined below are intended to address service delivery, operations, and franchise administration issues by adding enforcement tools. The time frame of

July 1, 2006 through June 30, 2009 will allow staff to gather additional data, evaluate system performance, and conduct stakeholder meetings and additional outreach before proposing more significant changes to be implemented in July of 2009.

In addition to the issues noted above regarding Franchise Management Tools, it is recommended that Council direct staff to investigate the following system changes related to service delivery and operational issues that can be implemented in Phase I:

- Improvements to vehicle signage and solid waste and recyclables containers marking and identification.
- Provide cart service for garbage and recycling for customers on a request basis.
- Establish standards in the franchise application process to ensure applicants awarded a franchise can perform at the minimum service and performance levels.
- Provide additional assistance to debris box customers who participate in the City's construction and demolition (C&D) recycling program and are required to recycle their C&D waste to receive a C&D deposit refund.
- Provide educational assistance to businesses.
- Ensure haulers are adhering to California's more stringent vehicle emissions laws.

Many of the changes to the administration of the franchise system are associated with improving reporting requirements and incorporating incentives for compliance. Some examples being considered include:

- Streamline the termination or suspension process for franchised haulers who refuse to remit required fees to the City (refusal to pay fees has been an ongoing issue).
- Require submittal of an annual marketing report and financial statement from haulers.

*Benefits:* Adoption of the above recommendations will result in the development and deployment of additional tools to administer the existing franchise system designed to improve quality of service to customers, resolve customer service issues, enhance revenue collection, and support the City's solid waste diversion goals.

*Implementation:* The above noted changes would be incorporated into revised Franchise Agreements that staff will be recommending for Council consideration in May 2006, and in the SJMC, if necessary.

### **Phase II: Beginning July 1, 2009**

ESD is targeting July of 2009 to implement broader changes to the Commercial Solid Waste Collection System. This schedule will allow time to adequately research system changes, receive input from stakeholders, receive Council direction/approval for system changes, and transition from one system to the next. Based on the results of research and stakeholder inputs, this schedule can be accelerated. Phase II is proposed to address the downtown and the remaining City-wide Commercial Solid Waste system as follows:

### Downtown Solution

*Scope & Description:* In this second phase of the redesign, staff proposes to investigate the feasibility of establishing an exclusive district (one contractor) in the downtown area that will not only perform collection services for solid waste and recyclables, but also perform "clean-up" activities creating a "Clean & Green Downtown." In this Clean & Green concept, staff proposes to explore integrating all services currently being provided (of a clean up nature) in the downtown core to be provided by a single service provider (hauler). The selected hauler would perform clean-up activities such as: street sweeping, public litter container collection and maintenance, general litter clean up, sidewalk washing, graffiti removal, surface cleaning (walls, benches, fountains, etc.) for the designated downtown district area. The remainder of the city outside the downtown district will remain non-exclusive.

*Benefits:* Anticipated benefits for businesses, residents, and visitors of San Jose by implementing this Clean & Green Downtown concept include the following:

- **Environmental:** Reduction of impacts associated with collection vehicles such as air pollution, traffic, noise etc. Improved recycling for businesses, reduction of storm water impacts from litter and incorrect cleaning practices.
- **Service accountability:** Currently, the responsibility for keeping downtown clean is shared among several stakeholders. Establishing one company as responsible for the downtown area would provide for more accountability and consequently a more attractive downtown.
- **Service nexus:** The costs for services delivered would be borne by the businesses receiving the direct benefit of those services. In addition to volume based garbage fees, clean up costs would be allocated to and absorbed by businesses who will receive the benefits in front of their place of business; enhancing their business climate.

*Implementation:* The overall cost for this consolidated service could be passed along to customers in their garbage bills. Rate setting to recover costs would be conducted by the City in accordance with Proposition 218 provisions. The Consolidated Utility Billing System (C-UBS) currently under development and planned for deployment in the summer of 2006, can be configured to perform the billing functions for this system. Staff has identified several potential funding sources that could reduce the general fund contributions to the services that are currently being provided by various City Departments. As part of the FY 06-07 budget process, staff will develop and submit an investment proposal for consultant services to begin exploratory work organizing the consolidation of downtown garbage/recycling services and additional cleaning services. Based on coordination with other departments/agencies, the scope for the consultant may include development of an RFP including stakeholder coordination, rate survey/analysis/setting, development of a draft RFP and a proposed agreement for exclusive downtown services, assistance with RFP proposal evaluation, etc. Staff would also work with the Downtown Association to investigate how this concept would interface with potential funding and activities provided through a PBID.

### Non-Downtown Solution

*Scope and Description:* Separately and in addition to the proposed Clean & Green Downtown, staff will investigate and evaluate a number of issues for potential change in Phase II to the remaining City-wide Commercial Solid Waste Collection System based on additional research and stakeholder coordination.

*Benefits:* As noted in Phase I, these changes will be focused on more effective administration of the franchise system, achieving the City's solid waste diversion goals, improving and expanding services to business customers, and ensuring a predictable flow of hauler Franchise Fee revenue to the City. Examples of potential improvements include:

- Develop effective enforcement tools to address illegal haulers.
- Explore incentives for increased recycling by haulers and their customers.
- Evaluate reducing the duration solid waste containers can remain upon the public right-of-way.
- Evaluate application of the fee system structure to close any gaps and ensure franchised haulers remit the required fees.
- Evaluate service delivery models at Mixed Use Developments.
- Require alternate fuel (clean air) solid waste collection vehicles in the downtown and phase in alternate fuel vehicles for the remainder of the city.

*Implementation:* Staff will work with PBCE on the CEQA clearance for the changes to be proposed under the Clean and Green Downtown and Phase II. The scope of the consulting services noted above for the development of the Clean & Green Downtown will also include the necessary services to research and design the Non-Downtown Commercial Solid Waste Collection System.

### OUTCOMES

Council approval of this staff report will provide staff with direction to return to Council with recommended actions for changes to the existing Commercial Solid Waste Collection System. Staff anticipates that these changes will provide for a more effective solid waste collection system, tighter controls over the franchised haulers, and provide for a more level playing field for the franchised solid waste collectors.

### PUBLIC OUTREACH

Clean and Green Downtown: Staff has met with representatives of downtown businesses and the Downtown Association to review the Clean and Green concept and has received a favorable response.

City-Wide Commercial Solid Waste Collection System: As part of the potential redesign of the commercial solid waste system, staff has held several outreach meetings to describe the intent of the commercial redesign project and collect feedback from stakeholders. Staff also presented the redesign information to representatives from downtown businesses associations. Focus groups have been conducted by an external research firm on residential and commercial representatives. Staff continues to meet with franchised waste haulers to update them on the progress of the redesign project and will conduct another meeting with them to discuss final Phase I comments before returning to Council this May. Staff will also conduct a special meeting to review the franchise application process and assist potential haulers with their franchise applications. ESD will distribute information to Commercial customers regarding new services available as a result of Phase I changes.

Additional stakeholder outreach will be necessary with the Valley Transportation Authority, existing commercial franchise haulers and affected downtown businesses and property owners during the program development and implementation phases of the commercial system redesign.

#### COORDINATION

This memorandum has been coordinated with Planning Building & Code Enforcement, San Jose Redevelopment Agency, Department of Transportation, and the Office of the City Attorney.

#### COST IMPLICATION

As part of the FY 06-07 budget process, staff will develop and submit an investment proposal for consulting services to provide the necessary resources to conduct the research and more fully develop the concepts noted herein.

#### BUDGET REFERENCE

Not applicable

#### CEQA

Negative Declaration, File No. PP92-11-308

  
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