



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: JOHN STUFFLEBEAN

SUBJECT: "SEE BELOW"

DATE: 04-19-06

Approved

Date

4/26/06

COUNCIL DISTRICT: City-Wide

SNI AREA: City-Wide

SUBJECT: AMENDMENTS TO CHAPTER 9.10 OF THE SAN JOSE MUNICIPAL CODE

RECOMMENDATION

Approve an ordinance amending Chapter 9.10 of Title 9 of the San Jose Municipal Code to implement changes to the Commercial Solid Waste Program.

OUTCOME

The resulting changes to the San José Municipal Code (SJMC) will allow staff to manage the Commercial Solid Waste Franchise System more effectively by requiring the franchisees to implement improvements in vehicle signage, customer options, and maintenance of equipment and by increasing the late charges for delinquent monthly reports. The ordinance will also include provisions relating to reporting levels of recycling by large venue events to meet the requirements of AB 2176.

BACKGROUND

On March 30, 1993, the City Council adopted Chapter 9.10 of the San Jose Municipal Code (SJMC). This chapter regulates solid waste management in San José including the storage, collection, transportation, and disposal of solid waste and recyclable materials.

On March 7, 2006, the City Council approved Commercial Solid Waste Collection System change recommendations to: improve services to the business community, support the City's

environmental goals, provide tools to improve administration of the system, and stabilize revenue flow.

In preparation for the new Commercial Solid Waste and Recyclables Collection Franchises (“Franchises”), which become effective July 1, 2006, Chapter 9.10 of the SJMC was analyzed for consistency with the new program enhancements and service provisions in the Franchises. The proposed ordinance is a result of that examination.

ANALYSIS

The following system changes related to service delivery, operational issues, and franchise administration will be implemented in Phase I of the commercial redesign process:

- Compliance with the requirements associated with sharing solid waste containers (Section 9.10.455).
- Improvements to collection vehicle identification and reporting requirements.
- Requirement that Franchisees comply with California’s vehicle emissions laws as adopted in 2004.
- Enhanced provisions for keeping containers free of graffiti.
- Increased ability to enforce the collection hours.
- Increased cart service options for customers.
- Increased charges for late report submittals.

A detailed discussion of these changes is presented in Attachment I.

PUBLIC OUTREACH

Staff met with the Haulers to discuss a draft Franchise Agreement and the franchise application process on March 13, 2006. The Haulers provided oral and written comments on the draft Franchise Agreement, which staff analyzed and incorporated where applicable. Staff conducted a subsequent meeting on April 20, 2006 for further review of system changes.

COORDINATION

This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement, the City Attorney’s Office, and the City Manager’s Budget Office.

COST IMPLICATIONS

The proposed ordinance will have no effect on revenues or expenditures.

This recommendation is consistent with both the “General Principles” and “Economic Recovery” sections of the Mayor’s Budget Strategies to the extent that it permits franchisees to operate

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successfully and competitively in San Jose while continuing to streamline, innovate, and simplify our operations.

BUDGET REFERENCE

Not applicable

CEQA

Negative Declaration, File No. PP92-11-308



JOHN STUFFLEBEAN
Director, Environmental Services

Business Phone Number: (408) 535-8560

Attachment

Attachment I

The proposed ordinance will make changes to the following specific code sections and/or add the concepts identified below.

Shared Solid Waste Containers-Permit Required (Section 9.10.455)

Currently, a business is not permitted to share a garbage container with any other business unless the businesses first apply for and obtain a permit from the Environmental Services Department. However, Haulers continue to service containers shared by multiple businesses without the businesses possessing a permit to share. The proposed amendment to this section would prohibit Haulers from offering and servicing shared containers unless the businesses have obtained a shared container permit.

Collection and Transportation of Solid Waste (Section 9.10.550)

This section describes the types of containers allowed for the collection and transportation of solid waste, the condition in which the containers are to be kept, and how collection and transportation shall be conducted.

The proposed amendment would require collection vehicles to be identified with a company vehicle number, and would require the haulers to report the vehicle numbers to the City during the franchise application period and also within 7 days of any changes to the vehicle fleet. In addition, the proposed amendment would require Haulers to comply with the State's enhanced vehicle emission standards.

Garbage Containers Permitted (Section 9.10.1390)

This section describes the types of solid waste containers permitted in the City of San José. Staff proposes to add the following requirement. The proposed amendment would require that all containers used for the collection of solid waste must remain graffiti free.

Hours of Collection (Section 9.10.1430)

This section defines the hours in which solid waste can be collected, moved, or transported from commercial premises adjacent to residential premises. Currently, the Code prevents the collection, movement, or transportation of solid waste before 6:00 a.m. when a commercial premise is adjacent to a residential premise. The proposed amendment would remove the word adjacent and replace it with the following language "...within 300 feet of any residential premise."

Restrictions on Customer Contracts (Section 9.10.1630)

This section sets out limitations on contracts between Haulers and their customers. Currently, customers may cancel a solid waste collection contract only after 12 months. After the 12-month term, a customer may elect to contract with a different Hauler by providing a 30-day notice to their current Hauler. Many small businesses in San José generate less than 1 cubic yard of solid

waste. However, because there currently are no requirements for Franchisees to offer wheeled cart service to their customers, in most cases these small quantity generators have no choice but to pay for and use one cubic yard (or larger) containers to store their solid waste. Many of these customers want to recycle, but do not want to pay for more solid waste service than they need. In addition, many businesses in the downtown area have space constraints and do not have a place to store their solid waste containers in between pickups (a requirement of the SJMC). The space constraints could be eased by the use of wheeled carts. The proposed amendment would permit a customer to cancel the contract within the first 12-months if the customer has requested cart service but the hauler does not provide the service within 30 days of the request.

Franchise Fees (Section 9.10.1710 B)

Currently, Franchise Fees are due and payable to the City on the first day of the second month immediately following the month in which collection services are provided. The proposed amendment would change the day Franchise Fees are due to the last day of the month following the month in which collection services are provided. For example, this change would move the due date for fees associated with March collection services from May 1st to April 30th. This change will align due dates between Finance and ESD, and provide one due date for Haulers.

Reports (Section 9.10.1720 C.)

Hauler monthly reports are due on the last day of the month following the month in which collection services are provided, essentially giving the Haulers a month to submit their reports. Currently, if a monthly report is delinquent for more than fifteen days, the Hauler is required to pay to the City a delinquent charge in the amount of fifty dollars. If the report remains delinquent for more than forty-five days, the delinquent report charge is one hundred dollars. Because the current late charges are not cumulative, the most a Hauler would pay for submitting late reports, regardless of duration, is one hundred dollars.

Inasmuch as accurate and timely reports are an integral component of program analysis and reviewing Hauler compliance, the proposed amendment would create a financial incentive for Haulers to submit complete and accurate reports on time. Staff proposes to modify the charges according to the following table.

Proposed Late Charges	
Days Late	Delinquent Report Charge
01-15 days	\$100.00
16-30 days	An additional \$100.00
31-45 days	An additional \$100.00
46-60 days	An additional \$100.00

If the report remains delinquent for more than sixty (60) days, the Hauler’s franchise would be subject to suspension by the Director of Environmental Services.

Reporting Requirements for Large Venue Events (New Section)

In 2004, the Legislature enacted amendments to the Public Resources Code (AB 2176) requiring local agencies to file annual reports with the California Integrated Waste Management Board (CIWMB) estimating the top 10% of large venues and large events, based upon the amount of solid waste generated. A “large event” is an event that charges admission, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event; examples include golf courses and streets or open spaces being used for an event such as a sporting event or flea market. A “large venue” is a permanent venue facility that annually seats or serves an average of 2,000 individuals within the grounds of the facility per day of operation of the venue; examples include airports, conference centers, zoos, museums and theaters. AB 2176 also requires operators of large venues and large events to submit to the local agency, upon request, written documentation of the type and weight of materials diverted and disposed at the large venue or large event.

The proposed ordinance would add a provision to Chapter 9.10 to require large venue and large event operators to submit documentation of waste reduction, reuse, recycling and diversion programs and the type and weight of materials diverted and disposed so that the City can submit more accurate reports to the CIWMB. The proposed provision is based on a model ordinance provided by the CIWMB.