



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 05-14-07

Approved

Ray Wines

Date

5/25/07

COUNCIL DISTRICT: City-Wide

**SUBJECT: AGREEMENT TO REIMBURSE COMMERCIAL SOLID WASTE
FRANCHISE FEES PAID BY SAN JOSÉ UNIFIED SCHOOL DISTRICT
AND ESTABLISHMENT OF A COMMERCIAL AB939 FEE FOR PUBLIC
SCHOOLS**

RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement with San José Unified School District (SJUSD) to allow for reimbursement of Commercial Solid Waste Franchise Fees paid by SJUSD for an initial term of July 1, 2007, through June 30, 2009, and to authorize the Director of Environmental Services to exercise options for up to three one-year extensions.
2. Include a provision in the 2007-2008 Schedule of Fees and Charges setting the Source Reduction and Recycling (AB939) Fee at \$0.00 per cubic yard for solid waste generated by eligible public school districts in San José.

OUTCOME

The Agreement with San José Unified School District (SJUSD) will enable the Environmental Services Department (ESD) to begin compliance with Council directive to resolve the commercial solid waste fees issue with public schools under the terms and conditions described in this report. SJUSD is the largest school district operating in San José; staff expects that this agreement will serve as the model for similar agreements with other public school districts which operate in San José.

BACKGROUND

During the May 9, 2006, public hearing where Council granted the current commercial solid waste franchises, representatives from the local public schools expressed concern about the economic impact of the City's solid waste fees on their organizations. The school representatives requested that the public schools located in San José be exempt from paying City commercial solid waste fees. Council directed ESD to work with school districts to resolve this issue in a manner that does not significantly impact the City's General Fund.

Many public schools and other State agencies have asserted a position that they should be exempt from the City's commercial solid waste fees. This position is partially derived from examples from other jurisdictions with a different commercial solid waste system than San José and/or misinterpretation of the City's commercial solid waste franchise structure. The City's non-exclusive franchise system for commercial solid waste has two types of fees: Franchise Fees imposed on the franchisees and AB939 Fees imposed on waste generators. A description and current rates for these fees is attached.

ANALYSIS

ESD developed several options to resolve the City's solid waste fees issue and initially presented these to public school representatives on June 15, 2006. ESD and District staff reviewed implementation feasibility, administrative and fiscal impacts, and environmental benefits derived from various options. After several meetings, ESD and District staff concluded that the best option is an agreement with the public school districts similar to the agreement the City has with Santa Clara County. In such an agreement, the public schools would use City franchised haulers to perform solid waste services; the City would set the AB 939 Fee to \$0.00 per cubic yard of solid waste; and the City would reimburse the public school districts for that portion of their solid waste service costs attributable to the franchise fees paid by the franchised hauler servicing their district. Key terms of the proposed agreement are as follows:

- SJUSD will subscribe to solid waste and recyclables collection services from a City-franchised hauler during the term of the proposed Agreement;
- SJUSD will submit Quarterly Diversion Reports to ESD in an electronic format developed and provided by the Director of ESD. The report will include information on waste prevention, re-use, recycling, discard, composting, and other aspects of integrated waste management programs at schools operated by the District within the city;
- The District will notify the City of any service level changes. The City will monitor SJUSD's solid waste service subscription levels and notify the District upon detection of excess or unnecessary service levels. The District will remedy excess service levels with its service provider;

- The District will adopt a waste diversion policy to apply to all of the District's schools in San José. This policy will prioritize waste diversion activities and establish waste diversion goals for schools;
- The District will notify the City when the District plans to develop solid waste and recyclables collection services Request for Proposal (RFP). Upon notice from the District, the City will provide technical assistance with RFP development and review and provide technical assistance to enhance District's waste diversion rate and minimize service costs;
- The District will be encouraged to participate, as appropriate, in the City's environmental programs to promote environmental stewardship and awareness within the school community. Through these programs, the City can assist the District with setting up recycling programs and can provide free recycling containers for paper and beverage containers;
- The City Council will set the Commercial AB 939 Fee at \$0.00 per cubic yard on all solid waste that is generated by the District and collected by a City-Franchised Hauler.
- The District will pay and remain current on any and all service charges billed by its City-Franchised Hauler that are attributable to Franchise Fees paid by the Hauler; and
- The City will reimburse the District on a quarterly basis for the solid waste services costs attributable to the City's Commercial Solid Waste Franchise Fee.

Staff identified 19 public school districts in San José generating an estimated 287,000 cubic yards of solid waste annually. San José Unified School District (SJUSD) was identified as the largest school district in San José contributing more than 25% of solid waste from public schools. Based on the solid waste data provided by SJUSD, staff calculated the solid waste diversion rate for the SJUSD at 18%.

Currently, the Commercial Solid Waste Franchise Fee is \$3.67 per cubic yard and the Commercial AB 939 Fee is \$0.89 per cubic yard of solid waste and \$0.00 per cubic yard for approved recyclable materials. The hauler monthly reports submitted under the current Franchise Agreements provide aggregate numbers on Franchise Fees and AB939 fees. Because AB939 Fees are assessed on generators, the City requires haulers to provide information on customers who are not paying AB939 fees as described in the attachment to this report.

The current amount of solid waste fee-based revenue received by the City is estimated to be less than \$100,000 per year because of the Tolling Agreements currently in effect with Allied Waste and Stevens Creek Disposal and Recycling, the public schools' use of non-franchised haulers, and self hauling of waste by some schools. If all school districts in San José were to use a City-franchised hauler, then City solid waste fee revenue from all public schools could be as high as \$1,300,000 per year. Because the City has not been receiving most of the CSW Franchise Fee revenue generated by the school districts, the total annual General Fund revenue reduction impact over current revenues is estimated at \$100,000.

One of the most significant components of this proposed Agreement is the establishment of a reporting relationship between the City and SJUSD. Staff is in the process of developing an

electronic reporting system for the public schools to report the quantities and activities related to solid waste, recycling, and other diversion programs. These reports will provide the City information on the waste diversion levels at various schools. Under this Agreement, the City will also provide technical assistance and programmatic support to the schools to enhance their environmental programs and waste diversion.

ALTERNATIVES

ESD staff developed numerous options and presented the options to the school districts during late 2006. Staff researched other jurisdictions and worked collaboratively with the public school representatives to develop the following alternatives for the proposed Agreement.

Alternative 1: Exempt public schools from City's Franchise Fee and AB 939 fee within the current non-exclusive franchise system.

Pros: Saves school districts money and reduces administrative oversight

Cons: None

Reason for not recommending: Deemed to be not feasible by the City Attorney's Office due to the structure of the solid waste franchise system.

Alternative 2: Establish an exclusive commercial waste franchise system and exempt public schools from City fees.

Pros: Saves school districts money and reduces administrative oversight

Cons: Exclusive contract may limit cost savings and service options to the school districts and the districts are not required to use the City's exclusive contractor.

Reason for not recommending: Could not be implemented until at least 2009 when the current non-exclusive franchise agreements expire and not preferred by the District.

Alternative 3: Set AB 939 Fees at \$0.00 per cubic yard for public schools and demand Franchise Fee payments from the franchised haulers for the solid waste services provided to the public schools.

Pros: Maintains the integrity of the current commercial solid waste franchise system

Cons: The District is not supportive to this alternative due to the fiscal impact of the City's solid waste fees.

Reason for not recommending: Not feasible due to the existing Tolling Agreements between the City and some haulers and not preferred by the District.

Alternative 4: Provide solid waste services to the public schools under City's solid waste contract for City facilities.

Pros: No Franchise Fees impact on the District.

Cons: City would need more resources to provide solid waste services to the District.

Reason for not recommending: Significantly large undertaking for the City. Not preferred by the District.

Alternative 5: Enter into an agreement with the SJUSD for Franchise Fee reimbursement and set the District's AB 939 Fee at \$0.00 (recommended).

Pros: Franchise Fees will be reimbursed to the District. Will maintain the integrity of the commercial solid waste franchise system.

Cons: Increased administrative resources to manage the reimbursement process.

Reason for recommending: Most viable option in current situation.

This alternative provides the schools with the financial relief they seek, provides the City with valuable data on recycling, and provides an opportunity for the City and the schools to partner to reduce the waste generated in the schools. The school district representatives have expressed willingness to enter into such an agreement for at least a two-year trial basis.

PUBLIC OUTREACH

The criteria below do not apply to this Agreement. This memorandum will be posted on the City's website for the Council Agenda of June 12, 2007.

Staff has extensively collaborated with school district representatives in developing and finalizing the recommendations in this report. In addition, staff researched how other cities address municipal solid waste fees on public schools and has shared these findings with City school district representatives.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

For 2007-2008, approval of this recommendation may result in a reduction of approximately \$100,000 in General Fund revenue generated by the Commercial Solid Waste Franchise Fee and a negligible reduction in the Commercial AB939 fee revenue which goes to the Integrated Waste Management Fund (423). ESD projects that approval of this recommendation will not change the forecasted revenue for these fees in the 2007-2008 Proposed Operating Budget. The 2007-2008 Proposed Operating Budget also includes some administrative support for managing agreements with SJUSD and additional school districts as they begin to participate in this reimbursement program.

CEQA

CEQA: Not a project.



JOHN STUFFLEBEAN

Director

Environmental Services Department

Attachment: Description of Franchise and Source Reduction and Recycling (AB939) Fees

For questions please contact Stephen Bantillo, Supervising Environmental Services Specialist, at (408) 975-2508.

Attachment

Description of Franchise and Source Reduction and Recycling (AB939) Fees

Franchise Fee

The Commercial Solid Waste Franchise Fee is imposed on the franchised hauler for the privilege of using the City streets for collecting, transporting or disposing of commercial solid waste kept, accumulated, or generated in the City of San José. The fee is based on the total cubic yards of service the collector provides to generators located within the City of San José. This is included in both the San José Municipal Code and the Commercial Solid Waste Collection Franchise Agreements between the City and franchised haulers.

The decision to pass the cost of the CSW Franchise Fee through to the generator is the choice and business decision of the franchised hauler. However, the hauler is still ultimately responsible for paying the Franchise Fees even if the customer refuses to pay the bill.

AB 939 Fee

The Source Reduction and Recycling Fee (referred to as “AB 939 Fee”) is used to implement source reduction and recycling programs in the City. It is imposed on the generator of solid waste. The fee is based on the total cubic yards of solid waste service to which the generator subscribes. The franchised hauler is responsible for either collecting or 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 the generator directly. This is set out in both the San José Municipal Code and the Commercial Solid Waste Collection Franchise Agreements between the City and franchised haulers. As an incentive for generators to recycle materials, the fee is set at zero for source separated recyclables and approved mixed recyclables.

Fee Rates

| | Commercial Franchise Fee per Cubic Yard | Commercial Source Reduction and Recycling Fee (AB 939 fee) per Cubic Yard |
|---|--|---|
| Uncompacted solid waste | \$3.67 | \$0.89 |
| compacted solid waste | \$11.01 | \$2.67 |
| Uncompacted approved recyclables | \$0.00 | \$0.00 |
| Compacted approved recyclables | \$0.00 | \$0.00 |