



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 08-06-07

Approved

Date

8/15/07

**COUNCIL DISTRICT:** City-Wide

**SUBJECT: AGREEMENT TO REIMBURSE COMMERCIAL SOLID WASTE FRANCHISE FEES PAID BY ELIGIBLE PUBLIC SCHOOL DISTRICTS, SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT, AND SAN JOSE STATE UNIVERSITY.**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute Agreements with eligible public school districts, San José/Evergreen Community College District, and San José State University to allow for reimbursement of Commercial Solid Waste Franchise Fees paid to the City for an initial term of July 1, 2007, through June 30, 2009, and authorizing the Director of Environmental Services to exercise options for up to three one-year extensions.

## OUTCOME

The Agreements with eligible public school districts, community colleges, and San José State University 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. Additionally, these agreements will also establish a cooperative working relationship between the City and the public schools to promote waste reduction and recycling programs at public schools.

## 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 (Attachment). 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.

Based on the Council directive, ESD staff worked with the San José Unified School District (SJUSD), the largest public school district in San José, to develop a model agreement between the City and the SJUSD that can be utilized by all other eligible public schools, community colleges, and San José State University.

On June 19, 2007, Council authorized the City Manager to negotiate and execute an agreement with the SJUSD to allow for reimbursement of Commercial Solid Waste Franchise Fees paid to the City for an initial term of July 1, 2007, through June 30, 2009 and directed ESD to develop similar agreements with other eligible public schools. In addition, Council established Source Reduction and Recycling Fee (AB 939 Fee) rate at \$0 for eligible public schools. Finally, Council directed staff to expand the franchise fee reimbursement program to other eligible public schools in the City.

Since Council directive on June 19, 2007, the SJUSD has adopted a resolution in support of the City's Go Green School Program to participate in school recycling and environmental stewardship programs. The SJUSD Board of Education also had an informational hearing on integrated waste management policy on August 2, 2007. The SJUSD is scheduled to present the agreement and the integrated waste management policy for the Board of Education's approval on September 6, 2007. ESD and SJUSD worked together and developed the following elements of the model agreement to be used by the eligible public schools, community colleges, and San José State University;

- 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 periodic Diversion Reports to ESD in an electronic format developed and provided by the Director of ESD. The reports 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 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.

### **ANALYSIS**

Staff identified 19 public school districts, two community colleges, and a state University in San José generating an estimated 298,000 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 City public schools.

Currently, the Commercial Solid Waste Franchise Fee is \$3.67 per cubic yard and the Commercial AB 939 Fee for the eligible public schools is \$0 per cubic yard of solid waste and approved recyclable materials.

The current amount of solid waste fee-based revenue from school districts 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, and because of self hauling of waste by some schools. 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 to be \$100,000.

Representatives from other City public schools have expressed consent to follow the model agreement between the City and SJUSD. One of the most significant components of these agreements is the establishment of a reporting relationship between the City and the public schools. These reports will provide the City information on the waste diversion levels at public schools and enable the City to provide technical assistance and programmatic support to the schools to enhance their environmental programs and waste diversion.

### **EVALUATION AND FOLLOW-UP**

On June 19, 2007, Council authorized the City Manager to negotiate and execute an agreement with the SJUSD to allow for reimbursement of Commercial Solid Waste Franchise Fees paid to the City and directed staff to develop similar agreements with other eligible public schools. The reporting relationship established between the City and the public schools by these agreements will provide tools to measure the performance of waste reduction activities performed by the schools and assist the ESD to measure the performance of the overall commercial solid waste system in the City.

## 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 August 28, 2007.

Staff has collaborated with the representatives from the public schools during the development of the franchise fee reimbursement model agreement.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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.

HONORABLE MAYOR AND CITY COUNCIL

08-06-07

**Subject: Agreement with Eligible Public Schools for Reimbursement of City Solid Waste Fees**

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**CEQA**

CEQA: Not a project.

A handwritten signature in black ink, appearing to read 'J. Stufflebean', is positioned above the printed name.

JOHN STUFFLEBEAN

Director

Environmental Services Department

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

For questions, please contact Jo Zientek, Deputy Director, at (408) 535-8557.

## 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 <b>approved</b> recyclables	\$0.00	\$0.00
Compacted <b>approved</b> recyclables	\$0.00	\$0.00