



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean  
Jennifer Maguire

**SUBJECT:** SEE BELOW

**DATE:** 11-10-08

Approved

Date

11/14/08

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** N/A

**SUBJECT: ADOPTION OF A RESOLUTION TO AUTHORIZE PAYMENT OF FUNDS FROM COMMERCIAL SOLID WASTE FEES TO ELIGIBLE PUBLIC SCHOOLS AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE GENERAL FUND AND THE INTEGRATED WASTE MANAGEMENT FUND TO IMPLEMENT THE PAYMENT**

## RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to allocate funds resulting from the Settlement Agreement with Browning-Ferris Industries of North America, Inc. and Allied Waste Services of North America, LLC to the following public school districts upon each district executing Waste Reduction and Recycling Cooperation Agreements with the City:
1. San Jose Unified School District, in the amount of \$575,795;
  2. Franklin-McKinley School District, in the amount of \$157,259;
  3. Alum Rock Union School District, in the amount of \$150,972;
  4. Cambrian School District, in the amount of \$63,210; and
  5. Orchard School District, \$11,598.
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
- (i) Establish a City-Wide Appropriation: Public School Solid Waste Reduction & Recycling Agreements, in the amount of \$1,449,250.
  - (ii) Increase the revenue estimate for Other Revenue by \$958,834 to recognize the revenue from the Settlement Agreement with Browning-Ferris Industries of North America, Inc. and Allied Waste Services of North America, LLC.

(iii) Increase the revenue estimate for transfers and reimbursements to establish a Transfer from the Integrated Waste Management Fund in the amount of \$490,416.

(c) Adopt the following Appropriation Ordinance Amendments in the Integrated Waste Management Fund (423):

- i) Establish a Transfer to the General Fund of \$490,416 for Commercial Solid Waste Fees from Solid Waste Service to Public School.
- ii) Decrease the Ending Fund Balance by \$490,416.

### **OUTCOME**

Approval of these recommendations would allow the City to provide funding to the public school districts that have Waste Reduction and Recycling Cooperation Agreements with the City as directed by Council on October 28, 2008.

### **BACKGROUND**

On October 28, 2008, Council adopted a resolution authorizing the City Attorney to execute a Settlement Agreement and Release that provides for the payment to the City of \$958,834 of Franchise fees and AB939 fees, and \$27,928 of AB 939 fees to San Jose Unified School District, by Browning-Ferris Industries of North America Inc. and Allied Waste Services of North America, LLC (BFI) arising out of solid waste collection services to public school districts in San Jose in exchange for the City's release of all obligations for Franchise fees due on BFI's service to these school districts prior to December 31, 2007, as authorized by Council in Closed Session on September 30, 2008. Council also directed staff to return to Council for approval of actions necessary to pay the school districts from the Settlement if these schools have entered into a Waste Reduction and Recycling Cooperation Agreement with the City.

### **ANALYSIS**

The recommended budget actions would provide funding of \$1,449,250 to eligible public school districts who have Waste Reduction and Recycling Cooperation Agreements with the City. Two funding sources would be used to make these payments: the Settlement Agreement between the City of San Jose and BFI, and a transfer to the General Fund from the Integrated Waste Management (IWM) Fund.

The Settlement Agreement settles a dispute between the City of San Jose and BFI which arises out of unpaid Franchise and AB 939 fees associated with solid waste collection service to school

districts in San Jose. The Settlement Agreement results in BFI remitting funds collected from various school districts and releases BFI from liability from Franchise fees due prior to December 31, 2007. The City must appropriate the funds to pay the eligible public school districts from the settlement with BFI per Council direction on October 28, 2008 (Item 7.3 Supplemental).

In addition to the payments arising out of the Settlement with BFI, the City must appropriate funds to pay eligible school districts for commercial solid waste fees remitted to the City from July 1, 2007 through November 1, 2008. Staff calculated the total amount to allocate for all eligible City school districts, above the amount resulting from the BFI Settlement, is \$490,416. Since the money to pay the eligible school districts will be from the General Fund, staff recommends making the General Fund whole by reimbursing the General Fund for an unrelated 2007-2008 expenditure that should have been paid from the IWM Fund. Specifically, in 2007-2008, the General Fund was used to pay eligible non-profit recyclers for operating waste diversion programs in the City. While this expenditure was budgeted in the General Fund for the 2007-2008 Adopted Budget, Council subsequently approved restructuring the program so that the non-profit recyclers program became eligible for funding from the IWM Fund. However, this expense was not budgeted in the IWM Fund until 2008-2009. The above recommendation to transfer \$490,416 from the IWM Fund to the General Fund would reconcile the previous expenditure.

The recommended appropriation actions would not resolve the disposition of commercial solid waste fees that may have been remitted by Stevens Creek Disposal for their service to school districts from December 2005 or later through July 1, 2007. Staff must consult with the school districts and Stevens Creek Disposal to verify the amount, if any, and return to Council for appropriation action(s).

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

As described above, staff may return to Council for appropriation actions after consulting with school districts and Stevens Creek Disposal.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- 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.
- 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.

This recommendation does not meet any of the criteria listed above. This memorandum is posted on the City's website for the December 2, 2008 Agenda. In addition, seven schools either currently have or are in the process of finalizing Waste Reduction and Recycling Cooperation Agreements with the City. Staff is working through the Santa Clara County School Superintendents Association to ensure all remaining school districts in the City know how to participate in this program.

**COORDINATION**

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

**COST SUMMARY/IMPLICATIONS**

This recommendation will have no net impact on the General Fund. The impact on the Integrated Waste Management Fund will be a reduction of \$490,416 in ending fund balance. Staff anticipates that this decrease will be fully offset by liquidations of prior year contract encumbrances.

It is anticipated that BFI/Allied Waste will remit additional Commercial Solid Waste Fees collected from eligible public schools in calendar year 2008. Staff plans to recommend that this additional revenue be recognized and appropriated into the new Public School Solid Waste Reduction & Recycling Agreements Appropriation during the Mid-Year Budget Review process in early 2009 so that these fees can be used to fund eligible school districts per Council direction on October 28, 2008 (Item 7.3) and as required by the Waste Reduction and Recycling Cooperation Agreements with the City.

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Total Appn	Amt. of Recommendation	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
423	8999	Unrestricted Ending Fund Balance	\$10,252,718	\$490,416	VIII-38	10/21/2008, Ord. No. 28422

HONORABLE MAYOR AND CITY COUNCIL

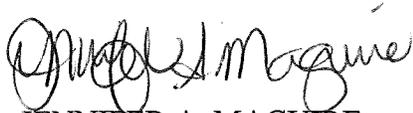
11-10-08

**Subject: Public Schools and Reimbursement of Commercial Solid Waste Fees**

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**CEQA**

CEQA: Not a project.



JENNIFER A. MAGUIRE  
Budget Director



JOHN STUFFLEBEAN  
Director, Environmental Services

I hereby certify that there will be funds available for appropriation in the General Fund in the Fiscal Year 2008-2009 monies in excess of those heretofore appropriated there from, said excess being at least \$1,449,250.



JENNIFER A. MAGUIRE  
Budget Director

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

