

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 04-28-09

Approved

Date 4/28/09

COUNCIL DISTRICT: City-Wide

SUBJECT: APPROVE AN ORDINANCE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSÉ MUNICIPAL CODE, AND ADOPT A RESOLUTION SUPERSEDING RESOLUTION NOS.73256 AND 74647 SETTING COMMERCIAL SOLID WASTE COLLECTION FRANCHISE FEES FOR SERVICES PERFORMED ON OR AFTER JULY 1, 2009.

RECOMMENDATION

1. Approve an ordinance amending Chapter 9.10 of Title 9 of the San José Municipal Code to add Sections 9.10.152 and 9.10.153 to define "large events" and "large venues"; amend Section 9.10.1720 to increase the penalty for submitting late monthly reports by \$200, from \$100 to \$300 for every 15 days late; and amend 9.10.1445 to conform with new definitions.
2. Adopt a resolution superseding Resolution Nos. 73256 and 74647 to set commercial solid waste collection franchise fees for services performed on or after July 1, 2009 by removing the annual exemption from franchise fees for franchisees who do not perform any front-loader service.

OUTCOME

Eliminating the annual cubic yardage exemption from franchise fees for franchisees who do not perform any front-loader service would result in a net increase of a maximum of \$250,000 to the General Fund each year. The approval of this code change is required for City Council to enact the 2009-2010 Proposed Operating Budget proposal to eliminate this exemption. The increase in late fees for monthly reports would provide a greater financial incentive for haulers to submit timely reports and save staff time. Changing the San José Municipal Code definition of a "Large Event" and "Large Venue" would conform to the City Council's policy direction and advance the City's diversion goals.

BACKGROUND

Franchised haulers pay franchise fees to the City of San José based upon the volume of solid waste service that they provide to San José customers. Currently, franchisees that do not provide front-load collection service (i.e. regular, scheduled pick-up service to businesses) are exempt from paying franchise fees on the first twenty thousand (20,000) cubic yards of uncompacted solid waste or the compacted equivalent collected each fiscal year. The City provided for this exemption at the inception of the current system for the purpose of assisting smaller collection companies.

Franchisees are required by their Franchise Agreement to submit monthly reports on their collection activity in the city. If the monthly report is not filed by the due date, the report is deemed delinquent and the franchisee must pay a delinquent report charge as specified in San José Municipal Code Section 9.10.1720. Currently, the delinquent charge is set at \$100.00 for every 15 days the report is late.

On September 29, 2004, the Large Venue and Large Event Recycling Act (AB 2176) was passed by California State Legislature to encourage solid waste source reduction, reuse, and recycling elements to be included in event and venue design and operations plans. The San José Municipal Code currently requires any person seeking permission to use public streets, parks, or facilities for an event attended by an average of 2,000 or more persons per day of operation to develop a waste reduction and recycling strategy and file a copy with the City's Director of Environmental Services. In June of 2007, City Council adopted a Special Events policy that defined large events as those with more than 1,000 attendees per day. The Municipal Code needs to be updated to reflect this change and ensure consistency with current City policy.

ANALYSIS

Franchise Fee Exemption

Adoption of a resolution superseding Resolution Nos. 73256 and 74647 to set commercial solid waste collection franchise fees for services performed on or after July 1, 2009 would remove the annual exemption from franchise fees for the first twenty thousand cubic yards of uncompacted solid waste or the compacted equivalent. The twenty thousand (20,000) cubic yard exemption from franchise fees is inconsistent with the Zero Waste and Green Vision Goals because the exemption removes the financial incentive to divert waste from landfills. Currently, only one franchisee is fully claiming the exemption and this franchisee is part of a larger company that provides the City with green waste collection and municipal solid waste processing services. While ten other franchises would be affected by the removal of the exemption, the impact on these companies are limited as most of the materials they collect are recyclable and not subject to franchise fees. With the removal of the 20,000 cubic yard exemption, every hauler would be required to pay franchise fees on all garbage collected from San José customers.

Late Report Fees

Despite the current progressive late fee structure for delinquent monthly report submittals, staff received 22 late reports from franchised haulers in 2008. Staff proposes to amend Section 9.10.1720 to increase this late fee structure from \$100.00 per 15 day increment to \$300.00 per 15 day increment. This fee structure more accurately reflects the burden on staff to follow-up on submittal and reconciliation of delinquent reports.

Large Event and Large Venue Definition

The State defines a Large Event under AB 2176 as an event that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event. In June 2007, the City Council approved a Special Events recycling program to encourage additional diversion from large events in San José. The City policy defines a large event as any event held on City owned property with 1,000 or more attendees per day. In order to ensure consistency with this program, the Administration recommends amending the Municipal Code to add Sections 9.10.152 and 9.10.153 to define "large events" and "large venues" and amending Section 9.10.1455 to conform to the new definitions.

EVALUATION AND FOLLOW-UP

This action does not address any performance measures.

PUBLIC OUTREACH/INTEREST

Although the criteria below do not apply to this item, this memorandum will be posted on the City's website for the Council Agenda of May 12, 2009.

In November 2008, the Environmental Services Department hosted an informational meeting for all of the current franchised haulers and anyone who might be interested in obtaining a franchise in the future. At this meeting staff verbally reviewed each of the proposed changes. In March 2009, staff sent a letter to each of the franchised haulers, detailing the proposed changes to the franchise agreements.

- 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

HONORABLE MAYOR AND CITY COUNCIL

04-28-09

Subject: SJMC Amendment and Franchise Fee Resolution

Page4

Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

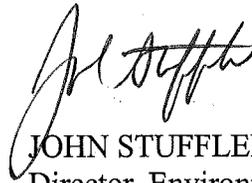
This memorandum was coordinated with the City Attorney's Office, City Manager's Budget Office, and Planning, Building, Code Enforcement Department.

FISCAL/POLICY ALIGNMENT

The approval of this code change is required for the City Council to enact the 2009-2010 Proposed Operating Budget proposal to eliminate the exemption for Commercial Solid Waste Franchise Fees.

CEQA

CEQA: Not a project



JOHN STUFFLEBEAN
Director, Environmental Services

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