



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 04-15-11

Approved 

Date 4/18/11

COUNCIL DISTRICT: City-Wide

**SUBJECT: WATER CONSUMPTION DATA USED FOR NON-RESIDENTIAL
SEWER SERVICE AND USE CHARGE BILLING**

RECOMMENDATION

Approve the Confidentiality and Nondisclosure Agreement between San Jose Water Company and the City of San Jose to allow the City to obtain water usage data from San Jose Water Company for the purpose of calculating Sewer Service and Use Charges for non-residential users.

OUTCOME

Approving the Confidentiality and Nondisclosure Agreement (“Agreement”) between San Jose Water Company and the City of San José (“City”) will allow the City to continue billing for Sanitary Sewer and Use Charges (“SSUC”) without changes to the current practice approved by Council resolution. In addition, this will ensure that the City continues to obtain water usage data from San Jose Water Company, which is required to calculate non-residential Sewer Service and Use Charges for FY 2011-2012 and beyond, for customers in San Jose Water Company’s service area.

BACKGROUND

SSUC rates are based on the volume of flow and the strength of the wastewater from residential, commercial, institutional, and industrial properties. Flow is measured as the average wastewater flow, and strength is measured in terms of biochemical oxygen demand (BOD), suspended solids (SS), and ammonia (NH₃). The rate structure was designed to apportion the cost of wastewater treatment services to properties in proportion to their relative contribution of flow and strength to

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the system. This structure is dictated by State revenue guidelines and allows rates to reflect the costs of providing service to residential and non-residential properties.

Rates are assigned by groupings, based on the type of use. Residential customers are assigned a flat rate. Non-residential customers are assigned a rate based on their type of flow strength, and their annual charges are calculated by annualizing the estimated monthly discharge using the months of January, February, and March, preceding the fiscal year for which the charge is being calculated.

Sources of water consumption data are provided by San José Municipal Water, Great Oaks Water Company and San Jose Water Company. The data required for billing purposes includes: premises or occupant address, the meter identification for validating consumption, the account identification and name for validation of type of business, and the winter water consumption. Winter water consumption data has been received in the past from the water suppliers in April of each year and is used to calculate non-residential SSUC after rates are adopted in June. The majority of non-residential SSUC are then placed on the Santa Clara County assessment roll and subsequently included on the property tax bill.

In December 2010, the City was notified by San Jose Water Company that it would no longer provide specific water usage information for their customers, due to a recent California Public Utilities Commission ("CPUC") decision limiting another water retailer's ability to provide such data. In response to that decision, San Jose Water Company filed an application seeking CPUC approval to provide water usage data to sewer providers in its service area, so long as the provider executed a Confidentiality and Nondisclosure Agreement. The CPUC has now approved the Agreement that was proposed by San Jose Water Company and the release of the water usage data to the City, provided that both parties execute the Agreement.

ANALYSIS

Under the proposed Agreement, the City is required to keep the customer water usage data that it receives from San Jose Water Company "in strictest confidence." The Agreement prohibits the disclosure of such information except to City employees, consultants and agents on a "need-to-know basis." However, the Agreement allows the City to disclose information which in the City's opinion is required to be disclosed in accordance with applicable laws or regulation, provided that advance notice and an opportunity to object to such disclosure is given to San Jose Water Company. Staff will develop protocols to ensure that the City complies with the Agreement, while still being able to use San Jose Water Company data in its billing calculations. If the Agreement is not executed by May 3, 2011, there may be insufficient time to acquire 2011 winter water usage data for the FY 2011-2012 non-residential SSUC calculation cycle.

EVALUATION AND FOLLOW-UP

If the Agreement is approved, staff will calculate FY 2011-2012 SSUC for non-residential accounts based on San Jose Water Company data, and those calculations will be brought forward to Council in August with the annual SSUC report.

POLICY ALTERNATIVES

Alternative #1: Direct staff to use the 2010 data to calculate FY 2011-2012 non-residential SSUC.

Pros: The City would avoid having to establish protocols to protect San Jose Water Company data from disclosure.

Cons: Customers would likely protest their bills if their 2010 usage was higher than 2011.

Alternatively, customers would be under-billed if 2010 usage was lower than 2011.

Reason for not recommending: Receiving updated data from San Jose Water Company will result in the most accurate billing.

PUBLIC OUTREACH/INTEREST

- 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)**

The recommendations contained in this memorandum do not apply to any of the above criteria.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and Finance Department.

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CEQA

Not a project, file number PP10-066(e) Services that involve no physical changes to the environment.

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions, please contact Linda Charfauros, Administrative Officer, Administrative Services Division, at (408) 535-8553.