

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 9.10.1435 TO REQUIRE THE FRANCHISEE WITH A COMMERCIAL SOLID WASTE AND RECYCLABLES FRANCHISE BASED ON GEOGRAPHIC SERVICE DISTRICTS TO PAY A SOURCE REDUCTION AND RECYCLING FEE

WHEREAS, the City of San José is authorized by state law to impose source reduction and recycling fees (“AB939 Fees”) in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan; and

WHEREAS, the revenue from the AB939 Fees funds activities such as management of the commercial solid waste franchise system, source reduction activities, recycling assistance and outreach to businesses, recyclables market development and zero waste planning; and

WHEREAS, on June 21, 2011, the City of San José granted franchises to Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County to provide commercial solid waste and recyclable materials collection from commercial, industrial and institutional waste generators in the North and South Districts; and

WHEREAS, the City Council finds that under the current commercial solid waste AB939 Fee structure, declining garbage volumes would not be adequate to fund the necessary source reduction and recycling activities;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 9.10.1435 of Chapter 9.10 of Title 9 of the San José Municipal Code is amended to read as follows:

9.10.1435 Commercial Source Reduction and Recycling Fee

- A. ~~Except as provided in Section 9.10.1436, e~~Each commercial solid waste generator in the City shall pay a source reduction and recycling fee as set forth in the schedule of fees adopted by resolution of the City Council. Such fee shall be based on the types or amounts of commercial solid waste produced and shall be used to pay the costs incurred by the city in preparing, adopting and implementing the Integrated Waste Management Plan required under Division 30 of the California Public Resources Code.
- B. Each commercial solid waste generator shall pay the source reduction and recycling fee to the solid waste collector authorized by the City to provide commercial solid waste collection services. Said fee shall be due and payable at such times as the fees or charges for solid waste collection services are due and payable to the commercial solid waste collector.
- C. The commercial solid waste collector shall remit to the City the source reduction and recycling fee, paid to the commercial solid waste collector by the commercial solid waste generators, at the time the commercial solid waste collector submits franchise fees under Section 9.10.1710. The fees shall be remitted to the City's Director of Finance and shall be accompanied by a written statement, verified by the person making the payment or a duly authorized representative of the person, showing the calculation of the remitted fees in such form and detail as the Director of Finance may require and showing such other information as the

Director of Finance may determine is material to a determination of the amount due.

- D. If a commercial solid waste generator fails or refuses to pay the source reduction and recycling fee when said fee is due and payable, the City may collect the fee, plus any late payment charges set forth in the schedule of fees adopted by resolution of the City Council, directly from the commercial solid waste generator or from the owner of the premises to which commercial solid waste collection services have been provided by the solid waste collector.
- E. If, within the time specified in Section 9.10.1710, the solid waste collector fails to remit to the City the source reduction and recycling fees paid to the solid waste collector by the commercial solid waste generator, the solid waste collector shall pay to the City a late payment charge in an amount equal to ten percent (10%) of the source reduction and recycling fees that were not timely remitted. If the solid waste collector fails to remit such fees within thirty (30) days of the date required by Section 9.10.1710, the solid waste collector shall pay a second late payment charge in an amount equal to ten percent (10%) of the source reduction and recycling fees that were not remitted within the thirty (30)-day period. Such second late payment charge shall be in addition to the first late payment charge. In addition, the solid waste collector shall pay interest on all source reduction and recycling fees that were paid to the solid waste collector by the solid waste generators but not timely remitted to the City at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date said fees were due to the date actually remitted.
- F. In the event a commercial solid waste generator fails or refuses to pay the source reduction and recycling fee to the commercial solid waste collector at the time the fees or charges for solid waste collection services are due and payable

to the solid waste collector, the solid waste collector shall notify the City of the name and address of the solid waste generator who refused or failed to pay the source reduction and recycling fee for the applicable reporting period and shall provide to the City such additional account information (including the size of the solid waste containers, the frequency of collection, and the amount of the source reduction and recycling fee the generator failed or refused to pay) sufficient for the City to pursue collection of the unpaid fee from the generator. Such information shall be provided by the commercial solid waste collector, in the form specified by the Director or the Director of Finance, at the time the commercial solid waste collector submits franchise fees under Section 9.10.1710. The commercial solid waste collector may, in lieu of providing the information required by this subsection F., pay to the City the source reduction and recycling fees otherwise payable by the commercial solid waste generator.

- G. Any person authorized to perform commercial collection services in the City pursuant to a franchise based on a geographic service district shall pay a source reduction and recycling fee as set forth in the schedule of fees adopted by resolution of the City Council. Such fee shall be based on the types or amounts of commercial solid waste produced and shall be used to pay the costs incurred by the City in preparing, adopting and implementing the Integrated Waste Management Plan required under Division 30 of the California Public Resources Code.
- H. The commercial solid waste collector shall remit to the City the source reduction and recycling fee at the time the commercial solid waste collector submits franchise fees under Section 9.10.1710. The fees shall be remitted to the City's Director of Finance and shall be accompanied by a written statement, verified by the person making the payment or a duly authorized representative of the person, showing the calculation of the remitted fees in such form and detail as

the Director of Finance may require and showing such other information as the Director of Finance may determine is material to a determination of the amount due.

I. If, within the time specified in Section 9.10.1710, the solid waste collector fails to remit to the City the source reduction and recycling fees, the solid waste collector shall pay to the City a late payment charge in an amount equal to ten percent (10%) of the source reduction and recycling fees that were not timely remitted. If the solid waste collector fails to remit such fees within thirty (30) days of the date required by Section 9.10.1710, the solid waste collector shall pay a second late payment charge in an amount equal to ten percent (10%) of the source reduction and recycling fees that were not remitted within the thirty (30)-day period. Such second late payment charge shall be in addition to the first late payment charge. In addition, the solid waste collector shall pay interest on all source reduction and recycling fees that were not timely remitted to the City at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date said fees were due to the date actually remitted.

SECTION 2. This ordinance shall become effective July 1, 2012.

RD:RLT:RLT
5/3/2012

PASSED FOR PUBLICATION of title this _____ day of May, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk