



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: April 23, 2012

Approved

Date

5/3/12

SUBJECT: AMENDMENTS TO CHAPTER 9.10 OF TITLE 9 AND SECTIONS 4.80.3070 AND 4.80.3080 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE, ADMINISTRATIVE CITATION SCHEDULE OF FINES, AND COMMERCIAL FRANCHISE FEE

RECOMMENDATION

1. Approve an ordinance amending Chapter 9.10 of Title 9, and Sections 4.80.3070 and 4.80.3080 of Title 4 of the San José Municipal Code to conform the Code to modifications associated with the new commercial solid waste system, and to existing practice for the use ratepayer revenue in the Integrated Waste Management Fund, effective July 1, 2012.
2. Adopt a resolution amending the Administrative Citation Schedule of Fines to escalate fines for the unauthorized collection of garbage and rubbish.
3. Adopt a resolution amending the Commercial Franchise Fee (Resolution No. 75601) to establish an annual supplemental franchise fee in the amount of \$1,000,000 for any franchisee granted both geographic collection districts, and to set the franchise fee at \$0 for construction and demolition debris and residential clean-out material collected by non-exclusive commercial solid waste haulers.

OUTCOME

Approval of these recommendations would allow the City to update the Municipal Code to reflect the new scope of the franchises, better regulate the exclusive and non-exclusive commercial solid waste franchisees, and update the franchise fees to be collected from the franchisee with both franchises based on geographic service districts.

BACKGROUND

The City has been granting franchises pursuant to Chapter 9.10 of the San José Municipal Code and the City Charter since 1994. Currently, the City has non-exclusive franchises for the collection of commercial solid waste including garbage, rubbish, and commingled recyclables. The commercial sector includes all commercial, industrial and institutional waste generators. On June 21, 2011, the City Council approved an exclusive commercial solid waste franchise agreement with Allied Waste Services of Santa Clara County (now doing business as Republic Services) and directed staff to return in 2011-2012 with proposed ordinances or resolutions needed to implement the new system. Non-exclusive franchise agreements, for haulers of residential clean-out material and/or construction and demolition waste, will be considered by the City Council in a separate action to be brought forward May 15, 2012, immediately following this item.

ANALYSIS

New Scope of the Commercial Solid Waste System

Chapter 9.10 of Title 9 of the Municipal Code regulates the commercial solid waste franchise system, and commercial solid waste, including collection of commercial garbage, rubbish, and recyclable material. Staff recommends adoption of the proposed ordinance and resolutions to ensure the exclusive and non-exclusive franchise agreements conform to the Municipal Code. The proposed ordinance would expand the materials within the scope of the exclusive franchise agreement with Republic, and limit the scope of materials that can continue to be collected by the non-exclusive franchisees. For example, certain materials such as construction and demolition (C&D) debris may continue to be collected by the non-exclusive commercial solid waste franchisees provided this material is collected pursuant to a temporary service agreement.

Collected Materials – Current and Post July 1, 2012		
Collection System	Collected Materials - Current	Collected Materials – Beginning July 1, 2012
Exclusive Franchises for North & South Districts	N/A	Garbage, recyclables, rubbish, organics, and yard trimmings generated at commercial premises City-wide; C&D debris collected pursuant to service agreements longer than one year; residential clean out material pursuant to a service agreement of more than seven days.

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Non-Exclusive Franchise	Garbage, commingled recyclables, rubbish, and organics generated at commercial premises; C&D debris, and residential clean out material.	C&D debris generated from a project collected pursuant to a service agreement of no longer than one year; residential clean out material pursuant to a temporary service agreement of no longer than seven days.
Not Required to Have a Franchise	Source separated recyclables; sold or donated material; secure document shredding; landscaping and gardening; yard clean-up service; demolition of a building or structure on the premises; construction performed pursuant to a permit; grading performed pursuant to a permit; weed abatement or refuse abatement performed pursuant to Chapter 9.12; and abatement action performed pursuant to Chapters 17.02 and 17.04.	Self-hauled material; sold or donated material; secure document shredding; weed abatement or refuse abatement performed pursuant to Chapter 9.12; abatement action performed pursuant to Chapters 17.02 and 17.04.

The proposed ordinance would make additional changes such as: (1) Allowing commercial premises to share containers to reflect the current collection practices of businesses; and (2) Allowing for more collection flexibility at mixed-use developments (MUDs) by permitting the commingling of residential and commercial solid waste.

Commercial Solid Waste Fees and Maximum Service Rate Setting Process

Staff recommends amending Municipal Code sections related to the application of the Source Reduction and Recycling Fee (AB939 Fees). One of the goals of the commercial system redesign was to ensure that there would be a stable stream of revenue to fund the solid waste management plan to divert waste from the landfills and promote recycling. In furtherance of this goal, staff will be bringing a proposed amendment to the Municipal Code for Council consideration on May 15, 2012, to shift the AB939 Fee previously collected from commercial generators to Republic Services, the franchisee with both franchises for the North District and South District. The AB939 Fee will continue to be collected from generators served by the non-exclusive franchisees in cases when the C&D Debris or residential clean-out material they collect has more than 20% incidental contamination that is disposed of as waste (rather than recycled). Staff does not anticipate revenue from the C&D Debris or residential clean-out material generators.

Additionally, staff proposes to repeal Municipal Code Sections 9.10.1436, 9.10.1437, and 9.10.1438 to remove the exemption for non-profit charitable reusers. Non-profit charitable reusers are currently exempt from paying AB939 Fees because their work promotes the diversion of waste from landfills by encouraging reuse and recycling. The need for this exemption has

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been replaced through agreements with the non-profits. The agreements, in place since 2007, provide approximately \$340,000 in annual support to non-profit reusers (Goodwill, Salvation Army and Hope Services) in exchange for annual reports of donated materials that are either recycled or reused. The agreements are an indirect way to help promote recycling of items that residents might otherwise dispose of, if reliable alternatives (such as the non-profit reusers) were not available.

Staff also recommends amending the Franchise Fee Resolution to memorialize the payment by Republic of a supplemental franchise fee in the amount of \$1,000,000 for the grant of both geographic service districts.

It is also recommended that the Municipal Code be amended to codify the process to formally adopt changes to the maximum commercial customer service rates in future years. The Republic franchise agreement includes a formula for establishing maximum customer service rates. The recommended changes to the Municipal Code include a provision for the City to review and adopt these maximum rates, as set forth in a resolution adopted by City Council, notify customers of proposed rate changes, as well as giving the exclusive commercial franchised hauler the right to request that rates be adjusted per the terms of the franchise agreement.

The City currently complies with state law limitations on use of residential ratepayer revenue for the Recycle Plus Program in the Integrated Waste Management Fund (Fund 423). The proposed ordinance would conform Sections 4.80.3070 and 4.80.3080, which were adopted prior to the passage of Proposition 218 in November 1996, to current practice.

Administrative Citation Schedule

Standards for collection, transportation and disposal to protect public health and safety reside in both the Municipal Code and the franchise agreements. A franchisee must comply with the Municipal Code and the terms of the franchise agreement as a condition of the franchise. Therefore, to deter unauthorized hauling, staff recommends amending the Schedule of Fines to escalate the penalty for unauthorized hauling of garbage and rubbish under Municipal Code Sections 9.10.1350 and 9.10.1360 from \$2,500 to a \$2,500 fine for the first offense, \$5,000 for the second violation in 12 months, and \$10,000 for the third violation in 12 months.

EVALUATION AND FOLLOW UP

No additional follow-up actions with the Council are expected at this time. Staff will monitor the impact of these actions and report any issues to the Council as appropriate.

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PUBLIC OUTREACH/INTEREST

- 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)**

These recommendations do not meet any of the above criteria; however, this memorandum will be posted on the City's website for the May 15, 2012 City Council agenda.

COORDINATION

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

COST SUMMARY/IMPLICATIONS

There are no cost implications as a result of these actions. The proposed changes to the franchise fee resolution and the administrative citation schedule would allow the City to collect the supplemental franchise fee to memorialize the payment by Republic of a supplemental franchise fee in the amount of \$1,000,000 for the grant of both geographic service districts, and collect higher fines for repeat violations.

CEQA

CEQA: Negative Declaration (Resolution #75916), File No. PP10-157.

/s/

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Acting Director, Environmental Services

For questions please contact Jo Zientek, Deputy Director, Environmental Services Department, at 408-535-8557.