

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Environmental Services	DATE: 2/25/2016
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SUBJECT: Proposed Amendments to Chapter 6, Article 6, Divisions 1 and 7 of the San Diego Municipal Code Relating to the Recyclable Material Franchise Exclusion; and Revisions to AB 939 Fee Collection

PRIMARY CONTACT (NAME, PHONE): Angela Colton, 858-573-1287	SECONDARY CONTACT (NAME, PHONE): Ken Prue, 858-492-5085
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00



FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):**

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Sierra, Mario	03/03/2016
Financial Management	CFO		
Liaison Office	DEPUTY CHIEF		
	COO		
	CITY ATTORNEY	Guy, Amanda	
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:     RESOLUTIONS     ORDINANCE(S)     AGREEMENT(S)     DEED(S)

1. Adopt an ordinance amending Chapter 6, Article 6, Divisions 1 and 7 of the San Diego Municipal Code Relating to the Recyclable Material Franchise Exclusion for Solid Waste Collection Franchises.
  
2. Adopt a resolution approving: (1) revisions to the manner of AB 939 fee collection to replace the current application of AB 939 fees from all solid waste generated in the City that is disposed by franchised haulers to all solid waste generated in the City that is collected by franchised haulers, to become effective January 1, 2017; and (2) an automatic annual rate adjustment for the AB 939 Fee based on the Consumer Price Index (CPI) rounded up

to the nearest \$1.00 to become effective July 1, 2017 (FY 2018).

**STAFF RECOMMENDATIONS:**

Approve requested actions.

**SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)**

**COUNCIL DISTRICT(S):** ALL

**COMMUNITY AREA(S):** ALL

**ENVIRONMENTAL IMPACT:** This activity is not a “project” and therefore is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(3), 15378(a), and 15378(b)(4) because this activity constitutes government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment.

**CITY CLERK  
INSTRUCTIONS:**

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 2/25/2016

ORIGINATING DEPARTMENT: Environmental Services

SUBJECT: Proposed Amendments to Chapter 6, Article 6, Divisions 1 and 7 of the San Diego Municipal Code Relating to the Recyclable Material Franchise Exclusion; and Revisions to AB 939 Fee Collection

COUNCIL DISTRICT(S): ALL

CONTACT/PHONE NUMBER: Angela Colton/858-573-1287

**DESCRIPTIVE SUMMARY OF ITEM:**

Amendments to Chapter 6, Article 6, Divisions 1 and 7 of the San Diego Municipal Code Relating to the Recyclable Material Franchise Exclusion for Solid Waste Collection Franchises; and Revisions to the Manner of AB 939 Fee Collection.

**STAFF RECOMMENDATION:**

Approve requested actions.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

The City's non-exclusive solid waste collection franchises (Franchise) currently exempt all recyclable materials (source-separated recyclable waste) from the Franchise requirement pursuant to SDMC §66.0109(c). The amendments to the Franchise agreements approved by the City Council in February 2016 permit the City to bring recyclable materials, or a portion thereof, within the Franchise through amendments to SDMC §66.0109(c). Staff is requesting that City Council approve the proposed amendments relating to SDMC §66.0109(c) to limit the types of recyclable materials that are exempt from the Franchise requirement. Staff also requests that the City Council approve changes to the manner by which the City's AB 939 Fee is charged to the Franchise haulers, as further described below. These changes will provide a financing mechanism for the City's Zero Waste Plan by: (1) requiring payment of Franchise and AB 939 Fees for those recyclable materials that are brought within the Franchise; and (2) requiring payment of AB 939 Fees by Franchisees for all solid waste collected under the Franchise.

Please see the attached Report to Council 16-024 for more information.

**CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):**

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective # 4: Foster services that improve quality of life

Goal #3: Create and sustain a resilient and economically prosperous City

Objective #4: Prepare and respond to climate change

Objective #5: Enhance San Diego's global standing

**FISCAL CONSIDERATIONS:**

The proposed changes regarding Franchise exemptions and the manner by which the AB 939 Fee is charged to Franchise haulers could increase revenues to the Recycling Enterprise Fund by an

estimated \$1.3 million annually and to the General Fund by an estimated \$1.7 million annually for an estimated total of \$3.0 million annually. These changes will provide a financing mechanism for the City's Zero Waste Plan.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):N/A

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Outreach efforts included discussions of proposed changes at eight Zero Waste Plan stakeholder meetings which were held from July to September, 2014. In addition, meetings were held from June 2014 to February 2016 with a wide range of groups and individuals, including residents, businesses, the military, haulers, recyclers, trade groups and associations. Notice of the proposed AB 939 Fee modification will be mailed to appropriate stakeholders at least 14 days in advance of the City Council Hearing. Notice of the proposed AB 939 Fee modification, including date, time, and location of the City Council hearing on the matter will be published in the City's official newspaper at least 10 days in advance of the hearing.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

The City, Franchise haulers, San Diego County Disposal Association, and City residents and businesses serviced by Franchise haulers.

Sierra, Mario

Originating Department

\_\_\_\_\_  
Deputy Chief/Chief Operating Officer



THE CITY OF SAN DIEGO

## Report to the City Council

DATE ISSUED: March 8, 2016 REPORT NO: 16-024

ATTENTION: Honorable Council President Sherri Lightner and Members of the City Council

SUBJECT: Proposed Amendments to Chapter 6, Article 6, Divisions 1 and 7 of the San Diego Municipal Code (SDMC) Relating to the Recyclable Material Franchise Exclusion; and Revisions to AB 939 Fee Collection

### REQUESTED ACTIONS:

1. Adopt an ordinance amending Chapter 6, Article 6, Divisions 1 and 7 of SDMC Relating to the Recyclable Material Franchise Exclusion for Solid Waste Collection Franchises.
2. Adopt a resolution approving: (1) revisions to the manner of AB 939 Fee collection to replace the current application of AB 939 Fees from all solid waste generated in the City that is disposed by franchised haulers to all solid waste generated in the City that is collected by franchised haulers, effective January 1, 2017; and (2) an automatic annual rate adjustment for the AB 939 Fee based on the Consumer Price Index (CPI) rounded up to the nearest \$1.00, effective July 1, 2017 (FY 2018).

### STAFF RECOMMENDATION:

Approve the requested actions.

### EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The City's non-exclusive solid waste collection franchises (Franchise) currently exempt all recyclable materials (source-separated recyclable waste) from the Franchise requirement pursuant to SDMC §66.0109(c). The amendments to the Franchise agreements approved by the City Council in February 2016 permit the City to bring recyclable materials, or a portion thereof, within the Franchise through amendments to SDMC §66.0109(c). Staff is requesting that City Council approve the proposed amendments relating to SDMC §66.0109(c) to limit the types of recyclable materials that are exempt from the Franchise requirement. Staff also requests that the City Council approve changes to the manner by which the City's AB 939 Fee is charged to the Franchise haulers, as further described below. These changes will provide a financing mechanism for the City's Zero Waste Plan by: (1) requiring payment of Franchise and AB 939 Fees for those recyclable materials that are brought within the Franchise; and (2) requiring payment of AB 939 Fees by Franchisees for all solid waste collected under the Franchise.

Franchisees are required to pay both a Franchise Fee and an AB 939 Fee for solid waste that is subject to the Franchise. The Franchise Fee is paid by Franchisees for each ton of solid waste collected within City limits. As of 2000, Class I Franchise Fees were set at \$1 per ton less than Class II Franchise Fees to recognize the difference in value of the two classes of Franchisees

and to enable the smaller Franchisees to be more competitive. Franchise Fees are currently \$15 per ton for Class I Franchisees, and \$16 per ton for Class II Franchisees.

The City's AB 939 Fee is currently \$11 per ton. AB 939 Fees are deposited into the Recycling Enterprise Fund and used exclusively to fund City recycling and waste diversion programs and activities. The AB 939 Fee is currently charged on all tons of solid waste disposed at Miramar Landfill, regardless of who hauls it, and on all tons of solid waste disposed by Franchisees pursuant to their Franchise, regardless of the final disposal site. The AB 939 Fee (like the Franchise Fee) is not currently charged to Franchisees for types of waste that fall outside the Franchise, such as source-separated "recyclable materials" (as defined in SDMC §66.0102). Therefore, if waste collected by Franchisees is delivered to a transfer station or mixed construction and demolition (C&D) debris processing facility, where the material is separated for recycling, only that portion of the load transferred to a disposal facility, would be subject to the AB 939 Fee.

The Municipal Code amendments relating to the Recyclable Material Franchise Exclusion for the Franchises:

As recycling and waste diversion tonnages increase, AB 939 Fee revenues decrease because they are currently charged to Franchisees based upon total tons disposed. This results in less revenue being available to support existing or future recycling and waste diversion programs in the City's Zero Waste Plan. The requested Municipal Code amendments will help stabilize those revenues by increasing the tonnage base included within the Franchise and thus the tonnage which is subject to the Franchise Fee and AB 939 Fee. The Municipal Code amendments would subject the following additional material to the Franchise requirement: recyclable materials such as commingled recyclable commodities, yard waste, food waste, and wood waste, where the seller or donor pays the buyer or the donee any consideration for collection, processing, recycling, transportation and/or disposal of the recyclable material, or for associated consultation services, that collectively exceed the fair market value of the recyclable material. The proposed amendments would continue to exempt source-separated inert materials, such as concrete, asphalt, dirt and rock, from the Franchise requirement.

The proposed revision to the manner of AB 939 Fee collection:

Currently, Resolution No. R-307834, adopted on November 19, 2012, applies the AB 939 Fee only to all solid waste generated in the City that is disposed, regardless of the location of the disposal site, and to all solid waste disposed at the Miramar Landfill, regardless of the location of origin of the solid waste. Staff proposes to modify the manner of collecting the AB 939 fee to apply it to all solid waste collected by Franchise haulers under the Franchise (i.e., all solid waste generated in the City collected by the Franchisees). The AB 939 Fee will continue to be charged to all solid waste disposed at the Miramar Landfill, regardless of the location of the origin of the solid waste. As described above, this change would help stabilize revenues by increasing the tonnage base included within the Franchise and therefore subject to the Franchise Fee and AB 939 Fee. This change would be effective January 1, 2017.

Pursuant to Resolution No. R-307834, an automatic CPI rate adjustment currently applies to the AB 939 Fees that are collected from Franchise haulers and non-franchisees. Staff is proposing that City Council approve the same automatic, annual CPI rate adjustment for the AB 939 Fee that would, beginning July 1, 2017, apply to all tons of solid waste of City origin collected by the Franchise haulers. This allows the City to apply the same uniform CPI rate adjustments and resulting AB 939 Fee amount to all solid waste that is subject to the AB 939

Fee, regardless of whether the solid waste is handled by a Franchise hauler or a non-franchisee. The annual change in the CPI rounded up to the next \$1.00, will be applied each July 1 commencing July 1, 2017 in accordance with the following formula:

$$\text{AB 939 Fee} \times \text{CPI}^* \text{ Change} = \text{New AB 939 Fee}$$

\*CPI refers to the Consumer Price index for all Urban Consumers, Los Angeles/Riverside/Orange County as published by the United States Department of Labor Statistics in the publication Consumer Price Indices. For purposes of the above formula, the CPI change will be based on the change in the CPI from February of the prior year to February of the year the adjustment is being made, expressed as a percentage. For example, a 2% increase in CPI from February 2015 to February 2016 will be stated as 102%. If the CPI is no longer published or is otherwise unavailable, a new index or appropriate benchmark will be applied upon City Council approval.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal # 2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective # 4: Foster services that improve quality of life

Goal # 3: Create and sustain a resilient and economically prosperous City

Objective # 4: Prepare and respond to climate change

Objective # 5: Enhance San Diego's global standing

FISCAL CONSIDERATIONS:

The proposed changes regarding Franchise exemptions and the manner by which the AB 939 Fee is charged to Franchise haulers could increase revenues to the Recycling Enterprise Fund by an estimated \$1.3 million annually and to the General Fund by an estimated \$1.7 million annually for an estimated total of \$3.0 million annually. These changes will provide a financing mechanism for the City's Zero Waste Plan.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable):

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

N/A

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

Outreach efforts included discussions of proposed changes at eight Zero Waste Plan stakeholder meetings which were held from July to September, 2014. In addition, meetings were held from June 2014 to February 2016 with a wide range of groups and individuals, including residents, businesses, the military, haulers, recyclers, trade groups and associations. Notice of the proposed AB 939 Fee modification will be mailed to appropriate stakeholders at least 14 days in advance of the City Council Hearing. Notice of the proposed AB 939 Fee modification, including date, time, and location of the City Council hearing on the matter will be published in the City's official newspaper at least 10 days in advance of the hearing.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The City, Franchise haulers, San Diego County Disposal Association, and City residents and businesses serviced by Franchise haulers.



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Mario X. Sierra  
Director, Environmental Services Department



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Paz Gomez, PE, CEM, CBE  
Deputy Chief Operating Officer  
Infrastructure/Public Works

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck-Out~~**

**NEW LANGUAGE: Double Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 66.0102, 66.0109, AND 66.0119, AND AMENDING CHAPTER 6, ARTICLE 6, DIVISION 7 BY AMENDING SECTIONS 66.0703 AND 66.0716, ALL RELATING TO THE RECYCLABLE MATERIAL FRANCHISE EXCLUSION FOR SOLID WASTE COLLECTION FRANCHISES.

**§66.0102 Definitions**

All defined terms in this ~~Article~~ Division appear in italics. For the purposes of ~~Article 6~~ this Division, the following definitions apply:

*AB 939 through Recyclable Material* [No change in text.]

~~*Recyclable Materials Collector* shall mean an enterprise that collects recyclable materials within the City. A recyclable materials collector shall not be authorized to collect any material that contains greater than ten (10) percent by volume of solid waste.~~

*Recycling through Refuse* [No change in text.]

*Solid ~~W~~aste* shall mean all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash refuse, rubbish, ~~construction and demolition wastes~~ construction and demolition waste, metallic discards, vegetable or animal

solid or semi-solid wastes, and other solid or semi--solid wastes. ~~Solid waste~~ does not include ~~hazardous waste~~ hazardous waste, ~~hazardous substances~~ hazardous substances, ~~medical waste~~ medical waste, or ~~recyclable materials~~ the recyclable materials specified in Section 66.0109(c).

*Solid Waste Facility through Waste Generator* [No change in text.]

**§66.0109 Franchise Exclusions**

The following types of solid waste collection are excluded from the franchise requirement, except that their transport shall be ~~made in compliance with the provisions of~~ subject to Section 66.0104:

(a) through (b) [No change in text.]

(c) ~~All recyclable materials~~ The following *recyclable material*:

(1) *Recyclable material* that is sold or donated by a person. *Recyclable material* remains subject to the franchise requirement if the seller or donor pays the buyer or the donee any consideration for the collection, processing, *recycling*, transportation and/or *disposal* of the *recyclable material*, or for associated consultation services, and the consideration collectively exceeds the fair market value of the *recyclable material*.

(2) *Recyclable material* that consists of inert material, such as concrete, asphalt, dirt, and rock.

(3) *Recyclable material* that consists of shredded document material that is removed from residential or commercial property by a *person* engaged in the business of providing secure document

shredding services, and where its removal is an incidental part of the total shredding services offered by that person.

(d) through (m) [No change in text.]

**§66.0119 Other Franchise Provisions**

(a) through (d) [No change in text.]

(e) In conjunction with franchisee's annual reporting in accordance with Section 66.0711, franchisee shall certify on a form or using a format prescribed by the Director, that all recyclable material that franchisee serviced during the period from July 1 through June 30 of the immediately preceding twelve-month period, which franchisee claims as exempt from the franchise requirement under Section 66.0109(c)(1), was sold or donated by a person. Franchisee's certification shall include:

- (1) The name and address of each person that sold or donated recyclable material to franchisee;
- (2) The date(s) that franchisee collected the sold or donated recyclable material from the person;
- (3) The total amount of sold or donated recyclable material, measured in tons, that franchisee collected from each person; and
- (4) A written statement, signed by each person, certifying that the person sold or donated the recyclable material to franchisee.

**§66.0703 Definitions**

All defined terms in this Division appear in *italics*. For purposes of this Division, the following definitions apply:

*AB 939 through Commercial facilities* [No change in text.]

*Construction and demolition waste* has the same meaning as set forth in Section 66.0102 of this Article.

*Department through Franchisee* [No change in text.]

*Hazardous substance* has the same meaning as set forth in Section 66.0102 of this Article.

*Hazardous waste* has the same meaning as set forth in Section 66.0102 of this Article.

*Medical waste* has the same meaning as set forth in Section 66.0102 of this Article.

*Mixed use facilities through Recyclable Materials* [No change in text.]

~~*Recyclable Materials Collector* has the same meaning as set forth in Section 66.0102 of this Article.~~ means an enterprise that collects the *recyclable materials* specified in Section 66.0109(c) within the *City* and which does not collect any material that contains greater than ten percent by volume of *solid waste*.

*Recycling through Self-haul* [No change in text.]

~~*Solid waste* has the same meaning as set forth in Section 66.0102 of this Article~~ means all putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash refuse, rubbish, *construction and demolition wastes*, metallic discards, vegetable or animal solid or semi-solid wastes, and other solid or semi-

solid wastes. Solid waste does not include hazardous waste, hazardous substances, medical waste, or recyclable materials.

**§66.0716 Selling or Donating ~~Recyclable Materials~~ Recyclable Materials**

Nothing in this Division shall preclude any *person* from selling ~~or exchanging~~ at fair market value, for reuse or *recycling*,<sup>2</sup> source-separated *recyclable materials* ~~generated~~ owned by that *person*,<sup>2</sup> or from donating to another entity, for reuse or *recycling*,<sup>2</sup> source-separated *recyclable materials* ~~generated~~ owned by that *person*.

ALG:js  
02/03/2016  
Or.Dept: ESD  
Doc No.: 1242130

DRAFT