

MEMORANDUM OF LAW

DATE: October 16, 1985

TO: Richard Hays, Deputy Director General  
Services/Refuse Collection Division

FROM: City Attorney

SUBJECT: Applicability of Proposition "F" Collection  
Guidelines to Certain Facilities

In response to your letter of September 11, 1985, concerning the applicability of Proposition "F" fees to various types of organizations, file copies of previous correspondence on this subject have been reviewed. On September 24, 1982, the Deputy Director, Solid Waste Division in a letter to the San Diego Disposal Association addressed the applicability of Proposition "F" to a list of organizations. That list, with minor exceptions, is identical to the list contained in your request. The letter of September 24, 1982 was reviewed by this office, and our files indicate was informally approved by Mr. Swett, Chief

Deputy City Attorney. A copy of all correspondence is attached.

To reiterate, the following analysis is presented for guidance. Proposition "F" was adopted as Section 14 to the "Peoples Ordinance" on November 3, 1981. This is codified in San Diego Municipal Code section 66.0123. That section differentiates between residential, commercial and industrial waste. It disallows collection fees for residential waste; it permits collection fees for commercial and industrial waste.

Residential waste applies to waste generated by single or multi family dwelling units. Commercial waste applies to waste generated by stores, motels, hotels, offices, and other commercial activities that pay a license tax under Chapter III of the San Diego Municipal Code, except for non-transient residential dwellings.

In this context, the following activities listed in your memorandum and in the letter of September 24, 1982 appear to be non-residential and therefore non-fee exempt:

Churches

Church operated schools

Privately operated schools

Convalescent hospitals (transient residential)

Hospitals

Little league, Pop Warner, Youth Soccer

Community Agencies

Thrift Stores

Youth Organizations (a variant of Little League, etc.)

VFW, American Legions, etc.

Civic Organizations (Lions, Optimist)

The following activities would be fee-exempted as residential users:

Retirement homes

Convents, Rectories

Convalescent homes (non-transient residential)

The following categories are not clearly residential users, but do not fit into a purely commercial category either:

Church affiliated stores and services

Union Offices

Other non-profit organizations

Insofar as the intent of Proposition "F" is to exempt residential users from collection fees, but to require fees in other cases, it would continue to be permissible to regard these activities as non-fee exempt unless each could establish a residential use exemption -- that is, that the activity performs the equivalent of a single or multi-family dwelling use-or, is exempt by virtue of San Diego Municipal Code Sec. 66.0125(i)

pertaining to civic clean-up, civil emergency, or recycling efforts.

The exemption of federal, state and county facilities has been considered a policy matter in the past. However, the ordinance does not preclude the continuation of such a policy, since it merely prohibits fees for collection of residential waste.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:ls:210(x043.2)

Attachments

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