DATE ISSUED: June 1, 2000 REPORT NO. 00-119

ATTENTION: Natural Resources & Culture Committee
Agenda of June 7, 2000

SUBJECT: Long Term Waste Delivery Agreements

REFERENCE: Manager's Report No. 00-72, dated April 5, 2000
Manager's Report No. 99-184, dated September 29, 1999

SUMMARY

Issue - What actions should the City take to establish equitable long term waste delivery agreements with the City's non-exclusive franchised solid waste collection companies?

Manager's Recommendations - 1) Authorize the City Manager to execute voluntary long term waste delivery agreements, under the terms and conditions described in this report, with any franchised solid waste collection company desiring to enter into such an agreement, 2) Aggregate tonnages collected by "small" independent franchised haulers, for the purpose of qualification for volume based disposal fee discounts, and share the resulting discount proportionately among the independent haulers based on reported tonnages, 3) Authorize the City Manager to amend the long term waste delivery agreement with EDCO Disposal Corporation to make that agreement more consistent with the "standard" waste delivery agreement, 4) Amend Municipal Code Sections 66.0102, 66.0111 and 66.0120 to establish a two tier non-exclusive solid waste collection franchise system, 5) Set the franchise fee rate for Class I franchisees at $1.00 per ton less than the franchise fee rate for Class II franchisees.

Other Recommendations - None.

Fiscal Impact - Based on waste tonnages disposed of in the Miramar Landfill during the last twelve months, the proposed volume based discounts would reduce Refuse Disposal Enterprise Fund revenues by approximately $195,000 per year. Projections of additional non-City tonnages that would be delivered by franchised haulers under these agreements would increase Refuse Disposal Enterprise Fund revenues by approximately $225,000 per year. Establishing a two tier franchise system and setting franchise fee rates for Class I franchisees at $1.00 per ton less than the current franchise fee would reduce General Fund revenues approximately $65,000 per year. However, franchise fee collections are projected to exceed budgeted revenues by approximately $166,000 in the current year.

BACKGROUND

On April 12, 2000, the Natural Resources & Culture Committee considered Manager's Report 00-72 of April 5, 2000 which recommended that the Manager be authorized to execute voluntary long term waste delivery agreements with the independent franchised haulers. In exchange for the independent haulers entering into five year agreements to deliver 100% of the wastes each company collected within the City of San Diego to the Miramar Landfill for disposal, the City would provide a $1 per ton discount on city waste and a $25 per ton rate on all non-city wastes. This proposal did not meet the stated needs of the independent haulers (e.g. a $2 per ton discount) and was not acceptable to them.

The Committee directed the City Manager to negotiate with the "small haulers" and find out if the City can arrive at a package of strategies and other commitments that arrives at an equitable solution without impacting existing waste delivery agreements with EDCO and Waste Management. Staff was directed to return to the NR&C Committee within 60 days.

DISCUSSION

Based on the Committee's direction to look at a package of strategies and commitments to arrive at an equitable solution, staff looked at other alternative financial methods to provide economic relief to the independent haulers without adversely impacting the existing waste delivery agreements. Staff is now proposing that, in addition to the waste delivery agreement provisions discussed on April 12, 2000, the non-exclusive solid waste collection franchise system be modified to provide a two tier system as discussed below. This combination of a revised franchise system with a lower franchise fee rate for the "small" independent haulers and the $1 per ton volume based disposal fee discount included in the waste delivery agreement, meets the needs of the independent haulers and they support this proposal.

Waste Delivery Agreement

Under this proposal, the standard waste delivery agreement to be offered to the independent haulers is unchanged from the agreement proposed in Manager's Report No. 00-72. In exchange for each independent hauler agreeing to deliver 100% of the wastes collected North of Route 54 in the City of San Diego to the Miramar Landfill for a period of five years, the City will give a $1 per ton discount from the Council approved standard disposal fee (currently $24 per ton) and a $25 per ton "all in" rate for non-city waste delivered to the Miramar Landfill for disposal. Upon approval, the waste delivery agreements would be made retroactive to March 1, 2000 for the application of disposal fee discounts.
In order to make the benefits of the waste delivery agreements more equitable to all franchised haulers, it was necessary to offer a waste delivery agreement to Pacific Waste Services and to amend the existing agreement with EDCO. Pacific Waste Services was offered a waste delivery agreement consistent with the terms offered EDCO but, due to Allied Waste Industries unique circumstances of owning and operating landfills in San Diego County, declined the City's offer. The amendment to the EDCO agreement provides an incentive for EDCO to direct haul additional waste collected in the City to Miramar Landfill and reduces non-city disposal fees from $27/ton to $25/ton to be consistent with the other waste delivery agreements. In exchange for those improvements to the terms, EDCO will extend its guaranteed waste delivery agreement an additional year which has a value to the City of $2.4 million in guaranteed revenues. No changes were needed to the waste delivery agreement with Waste Management since it already included the most favorable terms. Table I is a summary of the various City proposed waste delivery agreements.

COMPARISON OF WASTE DELIVERY AGREEMENTS Table I				
NAME	WASTE MGMT	PACIFIC WASTE SERVICES*	EDCO	INDEPENDEN T HAULERS**
(%) MARKET SHARE	47.5%	23.9%	21.3%	7.3%
TPY PLEDGED	200,000 TPY	75,000 TPY	100,000 TPY	65,000 TPY***
DISCOUNT	\$2/T TO 200,000T \$3/T > 200,000T	\$1/T TO 75,000T \$2/T > 75,000T	\$1/T TO 75,000T \$2/T > 75,000T	\$1/T
NON-CITY RATE	\$25 / T	\$25 / T	\$25 / T	\$25 / T
ESCALATION	FIXED 2 YEARS NEXT 3 YRS 75%CPI>3%	FLOAT WITH STANDARD RATE	FLOAT WITH STANDARD RATE	FLOAT WITH STANDARD RATE
TERM	5 YRS + 5 ONE YEAR OPTIONS	5 YRS + 5 ONE YEAR OPTIONS	6 YRS + 5 ONE YEAR OPTIONS	5 YRS + 5 ONE YEAR OPTIONS
EARLY TERMINATION	AFTER 10/01 90 DAY NOTICE \$100,000	NA	NA	NA

NOTES

* Pacific Waste declined to enter into a waste delivery agreement

** Allan Co., Debris Box, Dependable Disposal, Dominion Disposal, Ware Disposal, WEBCO Sanitation, Daily Disposal, Emerald Waste & Recycling, Express Waste & Roll Off, Tayman Industries, John Smith Earthworks

*** Pledge is 100% of waste collected North of Route 54 in City of San Diego

Non-Exclusive Franchise System

When the City's Non-Exclusive Franchise System ordinance was adopted in October 1996, the City had sixteen independent haulers with the market share broadly distributed (eight haulers shared 94% and eight haulers shared 6% of the commercial market). Now, as the result of mergers and acquisitions, three haulers have a 92.7% market share and eleven haulers, including five new franchisees, share the remaining 7.3% of the commercial market.

One of the primary functions of the City's non-exclusive franchise system is to ensure the orderly operation of solid waste services in San Diego and to maintain a competitive market place for San Diego businesses so they will continue to have a choice of service providers offering competitive pricing. When the current single tier system was enacted, market share was well distributed among a significant number of service providers. However, in the past three years, there has been an unprecedented level of mergers and acquisition in the solid waste industry, both locally and nationally, so that now in San Diego only three haulers provide over 92% of commercial waste collection services. This level of consolidation was not contemplated when the franchise system was originally established. At that time, any consolidations were expected to be offset by granting additional franchises.

The City currently has an adequate number of service providers with three large national or regional haulers and eleven much smaller independent haulers. The majority of the smaller haulers are “start up” companies. It is proposed to recognize this fundamental change in the solid waste industry by changing the City’s non-exclusive franchise system into a two tier system. One tier (Class II) would be large, full service haulers and the second tier (Class I) would be the smaller haulers, many of which offer specialized services to meet the needs of San Diego’s business community. Class I franchisees would be authorized to offer all types of solid waste collection services included in existing franchise agreements and City contracts would be equally open to both Class I and Class II franchisees.

Class I franchises would be granted to new franchisees or “start up” haulers that collect less than 75,000 tons of waste per year within the City of San Diego. A number of the existing franchisees that would be eligible for a Class I franchise have specialized in a single type of service such as roll off boxes and do not provide the full range of collection services, e.g. roll off boxes, bin service and individual container collection services, offered by the three largest haulers. It is expected many of these haulers will add additional types of services as their businesses grow. A Class I franchisee would be charged a reduced franchise fee, and in exchange, would be restricted from assigning their franchise to a existing Class II franchise holder unless it could demonstrate that such assignment would not adversely impact competition or contribute to a further consolidation of market share among the Class II franchisees. When a Class I franchisee’s annual tonnage grew to 75,000 tons per year, it would be converted to a Class II franchise.

Class II franchises would be granted to larger full-service solid waste collection haulers that collect more than 75,000 tons of waste per year in the City of San Diego. There would be no immediate changes to existing franchise agreements that will be designated as Class II franchises until the next annual extension of those agreements.
In determining which of the City’s existing non-exclusive franchises will be converted to Class I franchises and which will be Class II franchises, the cumulative tonnages collected by the parent company, and all affiliates, divisions and subsidiaries also holding franchise agreements, will be considered as if that tonnage was collected under a single franchise. Based on this definition, Table II indicates which current franchisee would be eligible to become a Class I franchisee. Any existing franchisee that does not want to become a Class I franchisee would be allowed to operate under their current franchise agreement until its expiration date.

PROPOSED DISTRIBUTION OF EXISTING FRANCHISES TO CLASS I OR CLASS II FRANCHISES Table II	

FRANCHISED HAULER AND SUBSIDIARIES **EST TPY**	
CLASS I	**< 75,000 TPY**
Allan Company	< 1,000 TPY
Daily Disposal	5 - 10,000 TPY
Debris Box	25 - 30,000 TPY
Dependable Disposal	5 - 10,000 TPY
Dominion Disposal	10 - 15,000 TPY
Emerald Waste & Recycling	< 1,000 TPY
Express Waste & Roll Off	1 - 5,000 TPY
John Smith Earthworks	< 1,000 TPY
Tayman Industries	1 - 5,000 TPY
Ware Disposal	1 - 5,000 TPY
WEBCO Sanitation	< 1,000 TPY
CLASS II	**> 75, 000 TPY**
EDCO Disposal Corporation EDCO Disposal, EDCO Waste & Recycling, Sanitainer	150 - 175,000 TPY
Pacific Waste Services (Allied Waste Industries)	175 - 200,000 TPY
Waste Management WM of San Diego, USA Waste, Reliable Waste, Moor Disposal, Coast Waste, BDC Special Waste	350 - 400,000 TPY

CONCLUSION

This proposal represents a compromise package of discounts and other strategies to meet the needs of smaller independent haulers while respecting existing waste delivery agreements. It is difficult to successfully operate a municipal landfill that charges a single price to all users, regardless of the tonnages each contributes, without some form of flow control to stabilize waste flow (disposal tonnages) and revenues. Since the Supreme Court found legislative flow control to be unconstitutional in 1994, local governments have had to rely on economic incentives, such as the long term waste delivery agreements entered into with Waste Management and EDCO, to stabilize disposal tonnages and revenues at public landfills.

This proposed package of financial incentives will provide the City with numerous benefits including guaranteed waste flow and revenue for the Miramar Landfill for five years, stable disposal fees for the same period, economic relief for the smaller independent haulers and ensuring a selection of solid waste collection service providers and competitive pricing for San Diego businesses.

ALTERNATIVES

1) Do not change the non-exclusive solid waste collection franchise system
2) Modify the recommendations.

Respectfully submitted,