

DATE ISSUED: April 24, 2003

REPORT NO. 03-067

ATTENTION: Natural Resources and Culture Committee  
Agenda of

SUBJECT: Non-Exclusive Solid Waste Collection Franchises

#### SUMMARY

Issue– Should the City Council modify the City’s Non-Exclusive Solid Waste Collection Franchise system to streamline its administration, renew and extend franchise agreements with the currently franchised haulers, increase the franchise fee by \$1 per ton, reopen the Non-Exclusive Solid Waste Collection Franchise application process and amend the Miramar Landfill Disposal Fee Schedule?

#### Manager’s Recommendations –

- 1) Modify the Non-Exclusive Solid Waste Collection Franchise system as follows: a) amend San Diego Municipal Code Section 66.0113 to reaffirm a seven-year maximum term for Class I franchises and to establish a 10-year maximum term for Class II franchises, b) authorize the City Manager to amend and extend current Class I franchise agreements to full seven-year terms and provide for renewals every two years rather than annually, c) amend San Diego Municipal Code Section 66.0119 to authorize the conversion of a Class I franchise to a Class II franchise, d) authorize the City Manager to execute new Class II franchise agreements with EDCO Disposal Corporation, Pacific Waste Services, Waste Management of San Diego and their affiliates for 10-year terms, e) increase the franchise fee by \$1 per ton effective April 1, 2003, and f) amend San Diego Municipal Code Section 66.0123 to increase bonding requirements for Class I and Class II franchises.
- 2) Do not reopen the franchise application process or issue additional Non-Exclusive Solid Waste Collection Franchises.

- 3) Amend the Miramar Landfill Disposal Fee Schedule by increasing the standard disposal fee for city waste by \$1 per ton and the standard disposal fee for non-city waste by \$3 per ton effective May 1, 2003.

Other Recommendations – The Class I franchise haulers request that the effective date of any franchise fee increase provide a minimum 30-day notice for their customers and that the term of Class I franchises match the term proposed for Class II franchises.

Fiscal Impact – Increasing the franchise fee to \$11 per ton for Class I franchises and \$12 per ton for Class II franchises effective April 1, 2003, would increase General Fund revenue by approximately \$850,000 in Fiscal Year 2004. Increasing the standard disposal fees would increase Refuse Disposal Enterprise Fund revenue by approximately \$350,000 in Fiscal Year 2004 with no impact to the General Fund.

## BACKGROUND

In October 1996, a Non-Exclusive Solid Waste Collection Franchise system was established to regulate the collection, transfer, transportation, recycling, processing and disposal of solid waste originating in the city of San Diego by private solid waste collection firms. This system replaced a licensing system where haulers paid a license fee of \$100 per company plus \$100 per collection vehicle. Haulers were also assessed a \$10 per ton Refuse Collector Business Tax on commercial waste disposed of in the City's Miramar Landfill. The 17 solid waste haulers licensed by the City, at the time the franchise system was established, were each granted a Non-Exclusive Solid Waste Collection Franchise. The franchise system's fees are based on the amount of solid waste collected in the city of San Diego, regardless of the final disposal site, rather than on the quantity of waste disposed of in the Miramar Landfill, to better reflect the value of the solid waste collection franchises.

By December 1998, a number of the original franchisees had been absorbed by larger companies which reduced the number of independent franchisees to 11. The City then reopened the franchise application process and, in April 1999, granted four additional franchises to provide San Diego's businesses a greater choice of solid waste service providers.

In September 2000, a two-tier Non-Exclusive Solid Waste Collection Franchise system was established to reflect the difference in market share served by the franchised haulers. Three franchisees, EDCO Disposal Corporation, Pacific Waste Services, Waste Management, and their affiliates, collect approximately 90% of the city's commercial waste and the remaining franchisees collect about 10%. Under the two-tier system, Class I franchises are for smaller companies that collect up to 75,000 tons of waste per year. Class II franchises are for companies that collect more than 75,000 tons of waste per year with no upper limit. The 75,000 ton per year level was selected because it was double the tonnage collected by the largest of the small franchisees and half of the tonnage collected by the smallest of the large franchisees.

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 franchises and to enable the smaller franchisees to be more competitive. Class I franchises may not be transferred to a Class II franchisee if the

transfer unreasonably impacts competition or reduces the choice of service providers for San Diego's businesses. Class I franchises may be transferred to another Class I franchisee or sold to a new business seeking to enter San Diego's solid waste collection market.

## DISCUSSION

Currently, Non-Exclusive Solid Waste Collection Franchise Agreements have an initial term of seven years with annual renewals after the second year, to guarantee a minimum five-year remaining term as required by State law, unless the City gives notice that the franchise will not be renewed and will expire at the end of the franchise term. Attachment 1 provides a list of the City's current Non-Exclusive Solid Waste Collection Franchisees.

### Franchise Term

The maximum term for a franchise agreement is set as seven (7) years in Municipal Code Section 66.0113. It is recommended this section be amended to read: "The initial term for any Class I franchise agreement shall not exceed seven (7) years. The initial term for any Class II franchise agreement shall not exceed ten (10) years. Any such agreement may be extended by the Council under the terms and conditions provided for in the franchise agreement."

This change would recognize the difference in value between a Class I and a Class II Non-Exclusive Solid Waste Collection Franchise. Class II franchisees currently pay an \$11 per ton franchise fee and generate approximately 90% of the over \$8 million in annual General Fund franchise fee revenue. Class I franchisees currently pay a \$10 per ton franchise fee and generate approximately 10% of the General Fund's annual franchise fee revenue.

### Solid Waste Collection Franchise Agreements

It is recommended that the interval between renewals of franchise agreements be increased for Class I franchises from one-year extensions on an annual basis to two-year extensions on a bi-annual basis and for Class II franchises from one-year extensions on an annual basis to five-year extensions every five years. Franchise agreements are now stable after six years of experience, so it is no longer necessary to review them on such a frequent basis. This change would streamline franchise administration and reduce the administrative burden on staff and the City Council of renewing 21 franchise agreements by ordinance each year. The change would not impact the City Council's ability to adjust franchise fees because each agreement includes the provision: "The Franchise Fee may be modified in the amount and manner of payment at anytime during the term of this Agreement by a resolution of the City Council."

### Class I Franchises

All current Class I franchises are due for renewal and an extension of their franchise term. The City's experience since the establishment of the franchise system indicates that annual renewals do not add value to the franchises for either the City or the franchisee and are administratively burdensome for both parties. It is recommended that Class I franchises be renewed every two years and that each renewal extend the franchise agreement to a full seven-year term.

Extension of a franchise agreement would be contingent upon the franchisee having satisfied all performance requirements of the agreement, including that the City is in receipt of all required documents (business license, performance bond, certificates of insurance, etc.) and that all franchise fee, recycling (AB 939) fee and disposal fee accounts are current.

Currently both the Municipal Code and the franchise agreements are silent regarding the conversion of a Class I franchise to a Class II franchise. In establishing the two-tier franchise system, it was envisioned that such conversions would ultimately occur, but no process was described. It is proposed to amend San Diego Municipal Code Section 66.0119 and the Class I franchise agreements to permit a Class I franchisee to apply for a Class II franchise when its tonnage exceeds 70,000 tons per year and to require such an application when its tonnage exceeds 75,000 tons per year.

### Class II Franchises

It is recommended that new Class II franchises be granted to EDCO Disposal Corporation, Pacific Waste Services, Waste Management of San Diego and their affiliate companies. The franchise agreements with these firms were not amended when the two-tier Non-Exclusive Solid Waste Collection Franchise system was established in September 2000 and all agreements with these franchisees need to be up dated.

The new Class II franchises would be for 10-year terms that would be renewed after five years to extend the agreement term back to a full 10-year term. Extension of an agreement would be contingent upon the franchisee satisfying all performance requirements in the agreement.

Because Class I franchises would be reviewed on a biannual basis and Class II franchises reviewed at five year intervals, any significant change to franchise agreement terms and conditions should be initiated with the Class II agreements and then, if appropriate, adopted for Class I agreements at the subsequent biannual review.

### Franchise Fee

Franchise fees were established in 1996 at the rate of \$10 per ton on waste collected within the City. This was a compromise because most franchise fees are based on a percentage of gross revenue and self-adjust for inflation. At the haulers' request, the franchise fee was established as a "flat dollar per ton rate" to eliminate City audits of hauler revenue accounts to establish the gross revenue to which the percentage franchise fee would be applied

If a Consumer Price Index (CPI) factor were applied to provide the General Fund with the same purchasing power from franchise fee revenues as when the fee was established, the rate would need to be raised to \$12.10 per ton. Increasing the franchise fee to \$12 per ton for Class II franchises and \$11 per ton for Class I franchises simply reflects changes to the CPI since the franchise system was established.

The total cost of solid waste disposal for franchised haulers at the City's Miramar Landfill is composed of three components, disposal fees, franchise fees and AB 939 fees. As shown in

Table I, the highest total cost for a franchised hauler to dispose of a ton of solid waste at the Miramar Landfill would be the same as it was in Fiscal Year 1995 if the proposed franchise fee increase is approved.

**SOLID WASTE DISPOSAL COST PER TON – MIRAMAR LANDFILL**

CLASS OF FRANCHISE	FY 1995	FY 2003	FY 2004 PROPOSED
<b>CLASS I</b>			
Disposal Fee*	\$33 per ton	\$23 per ton	\$23 per ton
RCBT**	\$10 per ton	N.A.	N.A.
Franchise Fee	N.A.	\$10 per ton	\$11 per ton
AB 939 Fee	N.A.	\$7 per ton	\$7 per ton
Total Fees	\$43 per ton	\$40 per ton	\$41 per ton
<b>CLASS II</b>			
Disposal Fee*	\$33 per ton	\$22-\$24 per ton	\$22-\$24 per ton
RCBT**	\$10 per ton	N.A.	N.A.
Franchise Fee	N.A.	\$11 per ton	\$12 per ton
AB 939 Fee	N.A.	\$7 per ton	\$7 per ton
Total Fees	\$43 per ton	\$40-\$42 per ton	\$41-\$43 per ton

\* Disposal fees vary with waste delivery commitment agreements

\*\* Refuse Collector Business Tax

Performance Bonds

It is recommended that Municipal Code Section 66.0123 be amended to increase the level of bonding for Class I and Class II franchises from \$10,000 to \$20,000 per franchise and to specify that acceptance of a letter of credit, certificate of deposit or cash deposit as an alternative to posting a performance bond shall be at the City Manager’s sole discretion. This will be the first increase in the bond amount since 1987 and is based on recent City experience that, when it was necessary to call a bond, \$10,000 was insufficient to cover all obligations in default.

Issuance of Additional Non-Exclusive Solid Waste Collection Franchises

Initially, the City Council limited the number of non-exclusive franchises to the 17 solid waste collection firms licensed and providing solid waste collection services at the time the franchise system was established. The Council also concluded the market share of commercial solid waste hauling was well distributed and that existing haulers were providing a high level of service at among the lowest commercial rates in the County. The Council further determined that the City’s interests would be best served by maintaining the same number of authorized collection firms and that no additional franchises should be granted unless the level of competition decreased through consolidations, acquisitions or firms going out of business. To ensure continued competition in the commercial collection market, the Environmental Services Department was directed to monitor competitiveness in the marketplace and determine if the franchise application process should be reopened. The department does not find a need to reopen the franchise application process at this time.

The City's Non-Exclusive Solid Waste Collection Franchise system is working effectively and competition among existing franchised haulers is providing San Diego's business community with high quality service at competitive rates. The granting of additional collection franchises would not increase the quantity of commercial waste collected nor would it provide additional revenue to the City's General Fund. Instead, it would further divide existing waste tonnages among a greater number of service providers and could threaten the economic viability of some Class I franchisees without providing additional benefits to San Diego's business community.

#### Miramar Landfill Disposal Fee Schedule

It is also proposed to amend the Miramar Landfill Disposal Fee Schedule by increasing the standard disposal fee for waste generated in the city by \$1 per ton to \$28 per ton and increasing the standard disposal fee for non-city waste by \$3 per ton to \$34 per ton effective May 1, 2003.

When franchised haulers "pass through" the increased franchise fee to their customers, some customers will consider canceling the collection service and "self hauling" their waste to the Miramar Landfill. To retain the current cost relationship between self-haul disposal and service by a franchised hauler, it is necessary to increase the standard disposal fee for city waste by \$1 per ton. Additionally, San Diego Landfill Systems recently increased the standard disposal fee at the Sycamore Canyon and Otay landfills from \$46 per ton to \$48.50 per ton. It is proposed to increase the non-city standard disposal fee by \$3 per ton to \$34 per ton so, when the City's AB 939 Fee and Refuse Collector Business Tax are added to the disposal fee, it will cost more to dispose of non-city waste at the Miramar Landfill than at a San Diego Landfill Systems site, thereby eliminating any incentive to bring non-city waste to the Miramar Landfill.

#### ALTERNATIVES

1. Retain the term of all franchise agreements at seven years with an annual renewal frequency.
2. Reopen the franchise application process and grant additional franchises.
3. Retain the franchise fee at the current rate or set a higher or lower rate per ton.
4. Retain the Miramar Landfill's standard disposal fees at their current rate.

Respectfully submitted,

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Robert A. Epler  
Assistant Environmental Services Director

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Approved: George I. Loveland  
Senior Deputy City Manager

HAYS/EPLER/TAS

Attachment: [List of Non-Exclusive Solid Waste Collection Franchisees](#)

