



THE CITY OF SAN DIEGO

Report to the City Council

DATE ISSUED: September 20, 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 July 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, 2018 (FY 2019).

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.

Environment Committee Direction

At the March 17, 2016 meeting of the Environment Committee, the Environmental Services Department (ESD) proposed a draft ordinance to implement the changes to SDMC §66.0109(c), and a resolution to revise how the AB 939 Fee is charged to the Franchisees and that applies an automatic annual CPI increase to the AB 939 Fee. The approved motion recommended that Council adopt the resolution and introduce the ordinance with the direction for staff to include an additional Franchise exclusion in the proposed revisions for recyclable materials collectors meeting certain conditions such as a tonnage cap and a diversion rate requirement. Following Committee, ESD met with Franchisees, and RECON Recycling, who spoke at Committee and provided suggestions and feedback regarding the proposed additional Franchise exclusion.

Language has been added to the ordinance that allows existing recyclable materials collectors to continue their current business. Specifically, proposed SDMC §66.0109(c)(2)(D) was added to exclude recyclable materials from the Franchise requirement if they are collected by a certified recyclable materials collector and certain other conditions are met. Those conditions include:

- The recyclable materials collector must either: (1) hold certified recyclable materials collector certification on the effective date of the ordinance; or (2) submit a complete certification application to the City by the effective date of the ordinance, which is subsequently approved by the City.
- The certified recyclable materials collector must continuously maintain their certified recyclable materials collector certification.
- The exclusion is limited to 1,000 tons of recyclable materials, collected within the City, per year.
- The recyclable materials must meet minimum diversion levels (90%).
- Food waste may not be collected under the exclusion.

If the ordinance is adopted, the current Franchise exclusions under SDMC §66.0109(c) would remain in place until June 30, 2017, and the revised Franchise exclusions would apply beginning July 1, 2017. This is later than previously proposed at Committee. These dates were pushed out to ensure the Franchise Haulers have ample time to prepare for the change, including notifying customers if/as necessary.

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 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, that collectively exceed the fair market value of the recyclable material. Following Committee, the proposed language was revised to delete "or for associated consultation services", to reflect feedback from stakeholders, and allow Certified Recyclable Materials Collectors to perform activities such as waste audits and supporting trainings, which would support the City's Zero Waste efforts. However, the amendments would continue to exempt source-separated inert materials, such as concrete, asphalt, dirt and rock, and certain shredded document material from the Franchise requirement. Also, as discussed above, certain recyclable materials collected by certified recyclable materials collectors would be excluded 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 July 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, 2018, 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, 2018 in accordance with the following formula:

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

*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. ESD anticipates that the addition of proposed SDMC §66.0109(c)(4), which responds to the March 17, 2016 Environment Committee motion, will reduce anticipated revenues. The actual reduction will depend upon the number of recyclable materials collectors that qualify for the exclusion, and the tonnage they actually haul under the exclusion. ESD estimates that the revenue to the Recycling Enterprise Fund could be reduced by \$110,000 to \$220,000, and to the General Fund by \$160,000 to \$320,000 annually, for an estimated total reduction between \$270,000 and \$540,000 annually.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable):

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

At the March 17, 2016 meeting of the Environment Committee, ESD presented a draft ordinance to implement the changes to SDMC §66.0109(c), and resolution to revise how the AB 939 Fee is charged to the Franchise haulers and that applies an automatic annual CPI increase to the AB 939 Fee. The approved motion was to recommend Council adopt the resolution and introduce the ordinance with the direction for staff to include an additional franchise exclusion in the proposed revisions for recyclable materials collectors meeting certain conditions such as a tonnage cap and a diversion rate requirement.

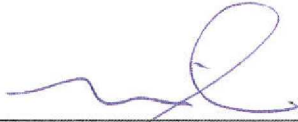
COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

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. Following Committee, ESD met with Franchisees, and RECON Recycling, who spoke at Committee and provided suggestions and feedback regarding the proposed additional Franchise exclusion. 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.



Mario X. Sierra
Director, Environmental Services Department



Paz Gomez, PE, CEM, CBE
Deputy Chief Operating Officer
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