

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV -6 AM 10:44

AGENDA REPORT

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Ordinance Establishing AB 939 Fee

DATE: October 13, 2014

City Administrator
Approval

Date

11/5/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

It is recommended that the City Council adopt an ordinance establishing a fee in the initial amount of \$3,240,000, effective July 1, 2015, to be adjusted by changes in the annual consumer price index, to pay the City's costs of preparing, adopting, and implementing the Alameda County Integrated Waste Management Plan, to be collected by the Mixed Materials and Organics Franchisee from its customers, which shall reduce said franchise fee by an equal amount and shall not result in an increase in Mixed Materials and Organics rates.

EXECUTIVE SUMMARY

In 1991 the City of Oakland established a Recycling Surcharge, currently called the Fund 1710 Recycling Fee, to pay for the City's costs to implement the newly promulgated Integrated Waste Management Act of 1989 (AB 939) and Alameda County Measure D -- Waste Reduction and Recycling Charter Amendment. The Recycling Surcharge included the cost for programs to meet the requirements of AB 939 and revenues for the City to pay for Residential Recycling Services. This Surcharge is collected by the Franchise Contractor and conveyed to the City monthly.

The new Mixed Materials and Organics (MM&O) Franchise Contract includes a franchise fee to the City which includes the City's cost of meeting the requirements of AB 939, including the County Integrated Waste Management Plan (CoIWMP). The cost for Residential Recycling Services will be paid directly by the customer and will not come to the City. The purpose of this ordinance is to shift the costs of programs to meet AB 939 requirements from the franchisee to MM&O customers consistent with AB 939's intent. Section 41901 of the Public Resources Code (part of AB 939) authorizes cities to collect the AB 939 Fee to fund recycling and solid waste diversion programs. Adopting this ordinance would clarify that the portion of the fees received by the City from the MM&O Franchise Contractor that fund AB 939 Programs are designated as AB 939 Fees. It would also reduce the MM&O franchise fee by an amount equivalent to AB

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939 Fee. Because of the equivalent reduction in the franchise fee, the adoption of this ordinance would have no impact on the rates set by City Council through Ordinance No. 13258 C.M.S., adopted on September 29, 2014. In particular, it would have no impact on rate payers.

OUTCOME

Adopting this ordinance would clarify that the portion of the fees received by the City from the MM&O franchise that fund AB 939 Programs are designated as AB 939 Fees. It would also reduce the MM&O franchise fee by an amount equivalent to AB 939 Fee.

BACKGROUND/LEGISLATIVE HISTORY

AB 939 required each city to adopt a Source Reduction and Recycling Element (SRRE) detailing programs to comply with AB 939, and AB 3001 required each city to adopt a Non-Disposal Facility Element (NDFE) to specify facilities to be used in meeting AB 939 goals. AB 939 also required each county to adopt a CoIWMP that incorporates each city's SRRE and that authorizes cities to collect AB 939 Fees to fund programs to meet the requirements of AB 939.

Oakland has adopted several pieces of legislation setting waste reduction goals, and defining programs to meet the goals. In 1992, the City adopted a SRRE (Resolution No. 69111 C.M.S.) to achieve AB 939 requirements through 2000, and in 1994 adopted a NDFE (Resolution No. 12747 C.M.S.). In 2002, the City adopted a 75% waste reduction goal (Resolution No. 77500 C.M.S.) to achieve goals through 2010, and in 2006 adopted a Zero Waste Strategic Plan (Resolution No. 80286 C.M.S.) to achieve waste reduction goals through 2020. In 2012, the City adopted a Zero Waste System Design (Resolution No. 83689 C.M.S.) that provided the structure for implementing the Strategic Plan.

ANALYSIS

Under the City's current Solid Waste Franchise Agreement (Agreement) AB 939 Fees are collected and referred to as "City Fees," and fund the City's Recycling Fund 1710. The City Fees are differentiated from the Franchise Fees also collected under the Agreement. The Zero Waste Services contracts recently approved by City Council include provisions for Franchise Fees to continue to provide revenues for the Recycling Fund.

State law prescribes that local jurisdictions may establish fees under AB 939 statutes to fund programs to meet the Goals and Programs adopted in the CoIWMP. The Alameda County CoIWMP, prepared by the Alameda County Waste Management Authority, was first adopted in 1997 and most recently amended in December 2011. It includes, by reference, SRREs, NDFEs and Household Hazardous Waste Elements for each city in the county, and the unincorporated county areas. In addition, the CoIWMP identifies solid waste facilities and wastesheds, and describes the countywide plan for meeting landfill disposal needs, and reaching the state-

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mandated 50% recycling goal and the county-mandated 75% recycling goal. Waste reduction and disposal facilities in the county that require Solid Waste Facility Permits must conform with policies and siting criteria contained in the CoIWMP.

Alameda CoIWMP Goals and Programs

The CoIWMP establishes various goals, and the City has established Programs under its Zero Waste Strategic Plan to meet these goals. CoIWMP goals include:

1. **PROMOTE ENVIRONMENTAL QUALITY:** Ensure protection of public health and safety, and to minimize environmental impacts, in all aspects of solid waste management.
2. **ACHIEVE MAXIMUM FEASIBLE WASTE REDUCTION:** Reduce the amount of waste disposed at landfills through improved management and conservation of resources.
3. **PROVIDE PUBLIC INFORMATION AND EDUCATION:** Build broad public support for the Plan's programs and their implementation.
4. **MEET DISPOSAL CAPACITY NEEDS:** Provide for the environmentally sound disposal of waste that cannot otherwise be reduced, reused or diverted.
5. **PROVIDE COST-EFFECTIVE WASTE SERVICES:** Fulfill the public trust by maximizing the value of the benefits received for each public dollar spent on improved waste management practices.
6. **ENSURE ADEQUATE FINANCING:** Ensure adequate financial support for the programs and facilities proposed in the Plan.
7. **PROMOTE INTERJURISDICTIONAL COOPERATION:** Achieve a more efficient and equitable solid waste management system through consensus building and shared efforts.

City Programs that have been established to meet CoIWMP and other City policy goals are described in Table 1 below.

Table 1- AB 939 Programs

Program Element	Program Description	CoIWMP Goal Met
Exclusive franchises for Zero Waste collection, processing and disposal services	Development and implementation of new recycling, organics, and mixed materials service contracts effective July 1, 2015	1-6
Non-Exclusive Permit System for Commercial Recycling	Development and implementation of a new commercial recycling system effective July 1, 2015	1-3, 4, 5
Non-exclusive franchise for construction & demolition (C&D) hauling and recycling	Development and implementation of a new C&D hauling system effective July 1, 2015	1-3, 5, 6
C&D Debris Recycling Ordinance	On-going administration of C&D Debris Recycling Ordinance for generators of C&D materials	1-3, 5, 6, 7
Recycling Market Development Zone	Provide direct assistance to support companies and enterprises that are recycling-based processors and manufacturers, to build local markets for recyclables collected within and beyond Oakland	1-3, 7
Legal Services	City Attorney and contracted counsel to support development and management of service contracts and franchises agreements, receipt and implementation of grants, and development of resolutions and ordinances	1-7

Program Element	Program Description	CoIWMP Goal Met
Program and Grant Administration	Administer recycling and waste management programs, including preparing and submitting annual AB 939/AB341 compliance reports to the state; administer state grants for Used Oil Recycling and City/County Programs. City Facilities Recycling Program, City Council Debris Box Program, Residential Bulky Pick-Up Program, Project ReCreate.	1-3, 5-7
Public Engagement, Technical Assistance, Advocacy, and Customer Service	Educate, promote and advocate for Zero Waste sustainability, including: live-staffed Recycling Hotline, technical assistance to businesses and apartment buildings in implementing state and county mandatory recycling legislation, legislative and regulatory advocacy for Zero Waste policies and funding (e.g., product stewardship)	1-3, 5, 7
Sustainable Oakland Support	Implement Zero Waste and sustainability policies and programs including Environmentally Preferable Purchasing (EPP), polystyrene food service ware ban	1-3, 5, 7
Zero Waste and Materials Use Climate Protection	Support implementation of Zero Waste solutions in the City's Energy & Climate Action Plan (ECAP)	1-3, 5, 7

Costs and Funding

The anticipated baseline budget for the Programs in Table 1 is budgeted at \$3.24 million for FY 2015-16 in Fund 1710, and these cost are included in the MM&O Franchise Contract as Franchise Fees. The primary cost categories are:

- Personnel in the following departments and program areas: Environmental Services Division, City Attorney, and Recycling Market Development Zone - \$2,540,000
- Operations and Management in the following departments and program areas: Environmental Services Division, City Attorney, Recycling Market Development Zone, and Fire Dept. (for Household Hazardous Waste illegal dumping abatement) - \$ 700,000

The new Zero Waste Services contracts that will take effect July 1, 2015 require the MM&O franchisee to remit a franchise fee to the City. It is the City's intention in adopting this ordinance to adopt an AB 939 Fee to pay for the costs (detailed above) of preparing, adopting, and

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implementing the CoIWMP, while reducing the franchise fee payable by the MM&O franchisee by an amount equivalent to the amount of the AB 939 Fee. The MM&O franchise provides for an initial franchise fee of Twenty-five Million Thirty-four Thousand Dollars (\$25,034,000). This ordinance would (a) reduce the franchise fee by Three Million Two Hundred Forty Thousand Dollars (\$3,240,000) to Twenty-one Million Seven Hundred Ninety-four Dollars (\$21,794,000), and (b) establish an AB 939 Fee of Three Million Two Hundred Forty Thousand Dollars (\$3,240,000).

PUBLIC OUTREACH/INTEREST

This item did not legally require any additional public outreach other than that required by the State Brown Act and City's Sunshine Ordinance, but the City did provide email notice to interested parties and the notices required by Government Code sections 66016 and 66018.

COORDINATION

Public Works Department staff has coordinated closely with the Office of the City Attorney for this report and ordinance.

COST SUMMARY/IMPLICATIONS

This ordinance has no net impact on rates charged to customers, or revenues received by the City.

SUSTAINABLE OPPORTUNITIES

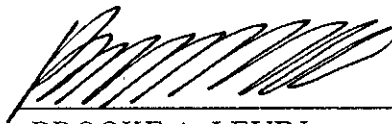
Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

Social Equity: Increased jobs through additional diversion of materials from the landfill.

For questions regarding this report, please contact Becky Dowdakin, Acting Environmental Services Manager, 510-238-6981.

Respectfully submitted,



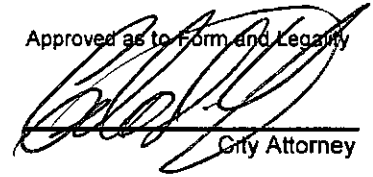
BROOKE A. LEVIN
Director, Public Works Department

Prepared by:
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Prepared by:
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Prepared by:
Mark Gaghardi, Senior Recycling Specialist

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City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

ORDINANCE ESTABLISHING A FEE IN THE INITIAL AMOUNT OF \$3,240,000, EFFECTIVE JULY 1, 2015, TO BE ADJUSTED BY CHANGES IN THE ANNUAL CONSUMER PRICE INDEX, TO PAY THE CITY'S COSTS OF PREPARING, ADOPTING, AND IMPLEMENTING THE ALAMEDA COUNTY INTEGRATED WASTE MANAGEMENT PLAN, TO BE COLLECTED BY THE MIXED MATERIALS AND ORGANICS FRANCHISEE FROM ITS CUSTOMERS, WHICH SHALL REDUCE SAID FRANCHISE FEE BY AN EQUAL AMOUNT AND SHALL NOT RESULT IN AN INCREASE IN MIXED MATERIALS AND ORGANICS RATES

WHEREAS, Public Resources Code section 41901 authorizes the City to impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing the Alameda County Integrated Waste Management Plan ("the Plan"), which Plan incorporates the Source Reduction and Recycling Element ("SRRE") of each City; and

WHEREAS, the City is a member agency of the Alameda County Waste Management Authority, along with the cities in the county, the County, and two sanitary districts, and the Authority has been delegated the authority to prepare and adopt the Plan; and

WHEREAS, the City adopted a SRRE (Resolution No. 69111 C.M.S.) to achieve AB 939 requirements through 2000, and, in 1994, adopted a Non-Disposal Facility Element (Resolution No. 12747 C.M.S.). In 2002, the City adopted a 75% waste reduction goal (Resolution No. 77500 C.M.S.) to achieve goals through 2010 and, in 2006, adopted a Zero Waste Strategic Plan (Resolution No. 80286 C.M.S.) to achieve waste reduction goals through 2020. In 2012 the City adopted a Zero Waste System Design (Resolution No. 83689 C.M.S.) that provided the structure for implementing the Strategic Plan; and

WHEREAS, the Plan establishes various Policies, including the following:

GOAL 1: PROMOTE ENVIRONMENTAL QUALITY: To ensure protection of public health and safety, and to minimize environmental impacts, in all aspects of solid waste management.

GOAL 2: ACHIEVE MAXIMUM FEASIBLE WASTE REDUCTION: To reduce the amount of waste disposed at landfills through improved management and conservation of resources.

GOAL 3: PROVIDE PUBLIC INFORMATION AND EDUCATION: To build broad public support for the Plan's programs and their implementation.

GOAL 4: MEET DISPOSAL CAPACITY NEEDS: To provide for the environmentally sound disposal of waste that cannot otherwise be reduced, reused or diverted.

GOAL 5: PROVIDE COST-EFFECTIVE WASTE SERVICES: To fulfill the public trust by maximizing the value of the benefits received for each public dollar spent on improved waste management practices.

GOAL 6: ENSURE ADEQUATE FINANCING: To ensure adequate financial support for the programs and facilities proposed in the Plan.

GOAL 7: PROMOTE INTERJURISDICTIONAL COOPERATION: To achieve a more efficient and equitable solid waste management system through consensus building and shared efforts;

WHEREAS, the City's SRRE, which is incorporated into the Plan, also contains various policies to allow the City to meet the source reduction and diversion goals established under state law; and

WHEREAS, the City has since 1995 collected a fee from Waste Management for recycling programs to fund the City's costs of preparing, adopting, and implementing the Alameda Countywide Integrated Waste Management Plan pursuant to its Franchise Agreement with Waste Management of Alameda County, dated December 1, 1995; and

WHEREAS, the revenues from that fee fund, among other things, the City's programs to implement the Alameda County Integrated Waste Management Plan; and

WHEREAS, the programs funded by the existing fee include the following, which programs relate to the Plan policies as described below:

Program Element	Program Description	CoIWMP Goal Met
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C&D Debris Recycling Ordinance	On-going administration of C&D Debris Recycling Ordinance for generators of C&D materials	1-3, 5, 6, 7
Recycling Market Development Zone	Provide direct assistance to support companies and enterprises that are recycling-based processors and manufacturers, to build local markets for recyclables collected within and beyond Oakland	1-3, 7
Legal Services	City Attorney and contracted counsel to support development and management of service contracts and franchises agreements, receipt and implementation of grants, and development of resolutions and ordinances	1-7

Program Element	Program Description	CoIWMP Goal Met
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Public Engagement, Technical Assistance, Advocacy, and Customer Service	Educate, promote and advocate for Zero Waste sustainability, including: live-staffed Recycling Hotline, technical assistance to businesses and apartment buildings in implementing state and county mandatory recycling legislation, legislative and regulatory advocacy for Zero Waste policies and funding (e.g., product stewardship)	1-3, 5, 7
Sustainable Oakland Support	Implement Zero Waste and sustainability policies and programs including Environmentally Preferable Purchasing (EPP), polystyrene food service ware ban	1-3, 5, 7
Zero Waste and Materials Use Climate Protection	Support implementation of Zero Waste solutions in the City's Energy & Climate Action Plan (ECAP)	1-3, 5, 7

WHEREAS, the annual costs of these various City programs is currently estimated to be \$3,240,000. The basis for this cost estimates is detailed in the accompanying agenda report. The costs, being primarily associated with personnel and general administration, will tend to increase with standard consumer price indexes for the Bay Area; and

WHEREAS, the Franchise Agreement expires on June 30, 2015, and, in anticipation of entering into new solid waste service agreements effective July 1, 2015, the City adopted a Zero Waste Strategic Plan with the overarching goal of reducing landfill disposal to only 40,000 tons per year by 2020. In furtherance of this strategic goal, the City issued the Zero Waste System Requests for Proposals for Mixed Materials and Organics Collection Services ("MM&O"), Residential Recycling Collection Services ("RR"), and Landfill Disposal Services ("Disposal"); and

WHEREAS, franchises and contracts were awarded for those respective services to Waste Management of Alameda County ("WMAC") (MM&O and Disposal) and California Waste Solutions ("CWS") (RR); and

WHEREAS, the MM&O Franchise Agreement requires WMAC to remit a franchise fee to the City and authorizes the City to set other fees as the City deems necessary from time to time. WMAC is obligated to remit such other fees so long as its service charges are adjusted to include the other fees; and

WHEREAS, it is the City's intention in adopting this ordinance to establish a fee to pay for the costs (detailed above) of preparing, adopting, and implementing the Alameda Countywide Integrated Waste Management Plan ("the Fee"), subject to annual adjustment to reflect the impacts of inflation. It is further the City's intention to reduce the franchise fee payable by WMAC by an amount equivalent to the amount collected by the Fee.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. The City Council finds that enactment of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act, California Code of Regulations, title 21, section 15378(b)(2), (b)(4); further, even if it were a "project," it would be categorically exempt from the California Environmental Quality Act pursuant to California Code of Regulations, title 21, section 15308.

Section 3. There is hereby imposed on MM&O customers a fee pursuant to Public Resources Code section 41901, effective July 1, 2015, in the initial aggregate annual amount of \$3,240,000 to be adjusted by the change in the annual Consumer Price Index – All Urban Consumers, Series ID cuura422sa0, Not Seasonally adjusted, San Francisco-Oakland-San Jose, CA for the prior calendar year, between 2013 and 2014. Effective each July 1 thereafter, the Fee shall be adjusted by the percentage change in the annual Consumer Price Index – All Urban Consumers, Series ID cuura422sa0, Not Seasonally adjusted, San Francisco-Oakland-San Jose. In any event, in no year shall the adjustment be less than zero (0) percent. Notwithstanding the foregoing, no adjustment shall be implemented for a particular fiscal year, other than 2015-2016, if the MM&O Contractor's gross receipts for the prior calendar year were less than the calendar year previous to that. The revenues from the Fee shall be deposited into Fund No. 1710, known as the Recycling Fund, and used exclusively for preparing, adopting, and implementing the Plan and for setting and collecting the Fee.

Section 4. The MM&O contractor shall allocate the Fee to MM&O customers in a manner that is proportionate to the amount of mixed materials collected and that is consistent with its existing City-approved rate structure. As soon as practicable following the effective date of this ordinance but no later than June 1, 2015, the MM&O contractor shall submit for the City's review and approval a proposed method of allocating the Fee to MM&O customers.

Section 5. So long as the Fee or any portion thereof is remitted to the City the franchise fee otherwise payable under the MM&O Contract shall be reduced by an equal amount and shall not result in an increase in MMO rates. In the event that the Fee, or any portion of it, is invalidated or the City or Contractor is prevented from collecting the Fee, or any portion of it, the MM&O Contractor shall be obligated to pay the franchise fee in a sufficient amount to make the annual revenue from the Fee and the franchise fee equal to the amount of franchise fee otherwise payable under the MM&O Contract.

Section 6. This ordinance has been adopted pursuant to Health and Safety Code section 41901 and Government Code section 66016.

Section 7. Pursuant to City of Oakland Charter Section 216, this ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes; or, if it receives five (5) affirmative votes, it shall become effective upon the seventh day after final adoption.

Section 8. The City Administrator shall be authorized to to amend the Mixed Materials and Organics Franchise Agreement for the City to establish and receive the Fee.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, KALB, KAPLAN, McELHANEY, REID SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST. _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California