

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: November 9, 2012

CAO File No. 0150-09777-0000

Council File No. 10-1797-S7

Council District: All

To: The City Council

The Honorable Bernard Parks, Chair
Education and Neighborhoods Committee

The Mayor

From: Miguel A. Santana, City Administrative Officer



MIGUEL A. SANTANA

Reference: Education and Neighborhoods Committee meeting held September 28, 2012

Subject: **REPORT BACK ON VARIOUS QUESTIONS REGARDING MULTI-FAMILY AND
COMMERCIAL WASTE FRANCHISE PROPOSALS**

On August 29, 2012, the Energy and Environment Committee of the City Council held a hearing on the issue of Refuse Collection and Recycling Multi-Family and Commercial Franchising. The Department of Public Works recommended that the City implement an Exclusive Franchising System. This Office recommended that the City implement a Non-Exclusive Franchising System.

During the Hearing, it became clear that certain legal questions required additional clarification. As a result, this Office met with the City Attorney and submitted requests for clarification on six questions. The City Attorney responded and answers are included in this report. Since multiple entities have indicated an intent to litigate any decision by the Council to establish either a Non-Exclusive or an Exclusive Franchise System, should the Council have further questions on these matters, we recommend that the Council seek advice from the City Attorney on the appropriate venue for addressing those questions.

In our original report, we recommended implementation of a Non-Exclusive Franchise with the projection that it could be implemented as early as 2013-14, prior to the December 2016 expiration of the State required 5-Year Notice for the commercial sector. We made this recommendation because we believe it would be most beneficial to the City to achieve environmental and financial goals as early as possible and because a Non-Exclusive Franchise provided the least amount of negative impacts to local businesses. The City Attorney's clarification said that the Notice period would need to expire prior to implementation of any Franchise (Exclusive or Non-Exclusive). Subsequent to the City Attorney's clarification, we discussed three options with the City Attorney that will still allow a Non-Exclusive Franchise to be implemented as early as 2013-14 and will also respect the intent of existing State regulations. The City Attorney told us that these are legal. We continue to recommend implementation of a Non-Exclusive Franchise. Should the Council desire to implement a Non-Exclusive Franchise, the

following options are available:

- A Non-Exclusive Franchise that incorporates only Multi-Family in 2013 and retains an open permit system for commercial until 2016;
- A Non-Exclusive Franchise that implements provisions not related to capital equipment or infrastructure investments prior to December 2016. This would clearly state that compliance with requirements like Clean Trucks would not be mandatory until after expiration of the notice, the same time that an Exclusive would be able to be implemented. However, Franchise Fees, Living Wage and other requirements may be implemented earlier; and,
- A Voluntary Non-Exclusive Franchise system that doesn't replace the Open Permit System for commercial customers until 2016. A hauler could choose to remain under the requirements of the existing Open Permit System. However, the City could offer incentives for haulers to voluntarily agree to a franchise prior to 2016. Haulers would be helping the City achieve goals earlier and would therefore, be eligible for incentives. Should the Council desire to do this, details would be worked out at a later date.

On September 28, 2012, the Education and Neighborhoods Committee held a special meeting to allow Neighborhood Council members the opportunity to comment on the two proposals. As a result, the Chair requested the City Administrative Officer to report on various questions regarding commercial waste franchise proposals before the City Council. Attachment B provides the questions and answers in compliance with that direction.

RECOMMENDATION

That the Council and Mayor receive and file this report.

CLARIFICATION OF LEGAL ISSUES

On November 7, 2012, the City Attorney provided advice on legal issues relating to the consideration of implementing either a Non-Exclusive or an Exclusive Waste Franchise System. Based on the answers to our questions provided by the City Attorney, it is our understanding that:

Question No. 1. Does State Proposition 26 apply to Waste Hauling Franchise Fees that are placed in the City General Fund? If it does, how can the City achieve General Fund revenue from the effort to establish City Waste Hauling Franchises?

Answer: Waste hauler franchise fees established pursuant to contract are not "imposed" and therefore, are not subject to any restrictions under Proposition 26. Waste hauler franchise fees that are not established by contract (e.g., set by ordinance) arguably are "imposed," and might be subject to Proposition 26. However, such fees are likely to fall under two exceptions to Proposition 26. One of these two exceptions would not restrict placing any portion of the fees in the City General Fund

Question No. 2. Does the State-required Five-Year Notice apply to both Exclusive and Non-Exclusive Franchises? If it does apply to Non-Exclusive Franchises, there appears to be some inherent conflict between the Five-Year Notice and the current City annual permit system. The City annual permit system appears to allow the City discretion in the approval of permits. If the Five-Year Notice applies, it would appear to prohibit the use of discretion in issuance of the permit during the Notice period. How is this reconciled?

Answer: Since the City now has an open permit system, the five-year minimum notice required under Public Resources Code Section 49520 must be provided before the City moves to a system of "exclusive solid waste-handling services," including a franchise system (whether the franchise is exclusive or nonexclusive). The City's current waste hauler permit system is ministerial and as such, creates no conflict with the five-year notice. Pursuant to the seven-year notice provided by the City to waste haulers in 2006, the required notice for the multi-family waste market expires in July 2013; and pursuant to the five-year notice provided by the City to waste haulers in 2011, the notice period for the commercial premises waste market expires in December 2016. Therefore, the franchise systems proposed by the BOS and the CAO may be implemented upon the expiration of those notice periods.

Question No. 3. What is the legal basis for a Waste Franchise? It is our understanding that the basis for the Franchise is the use of City property. We believe that this is also demonstrated in other City Franchises (i.e., Gas Company, Pipeline, Taxi, Towing/Police Garages, Private Line). We believe this is an important determination for the following reasons:

- One of the statutory exclusions under Proposition 26 for a Franchise Fee is for use of government property.
- Considerable emphasis has been placed on the potential exemptions from the Franchise based upon the type of waste, the type of customer (landlord or business entity hauler) or the identity of the regulator of the business practice - regardless of whether the use of City property is identified. While this may be a possible policy alternative, we believe it is inconsistent with the legal basis for the franchise.

Answer: The City has the authority to franchise the solid waste-handling market within its jurisdiction. Solid waste-hauling franchises are authorized pursuant to the California Integrated Waste Management Act, Public Resources Code Section 40050, et seq. (the "Act"), which states explicitly that solid waste-handling services are an issue of local concern. Under the Act, whether such services are provided exclusively by the City or whether all or a portion of such services are provided by private haulers pursuant to contract, license, permit, franchise or otherwise, is within the sole discretion of the City subject to Charter requirements.

Question No. 4. How does an Exclusive Franchise Agreement affect long-term individual contracts between waste haulers and customers? Does the Exclusive Franchise immediately nullify those business-to-business contracts?

Answer: Under an exclusive franchise system, a previously existing contract providing for waste-hauling services that is within the scope of the franchise and made by a hauler other than a franchisee is void. This would not violate the Contract Clauses of either the United State Constitution or California Constitution, both of which are accommodated to the inherent police power of the state to safeguard the vital interests of its residents. Consequently, all contracts incorporate and contemplate the reserve power of the state to amend the law or enact additional laws in furtherance of the police power to protect the public good and in pursuance of public policy.

Question No. 5. From a legal perspective (as opposed to policy perspective) is there a reason that an Exclusive Franchise Agreement must exempt haulers serving other government agencies?

Answer: State, county and other government agencies are immune from local regulation of trash collection. Waste haulers serving those government entities would therefore not be restricted by an exclusive franchise system.

CLARIFICATION REQUESTED BY THE CHAIR OF THE EDUCATIONS AND NEIGHBORHOODS COMMITTEE

1. Will companies be able to have more than one franchise?

Yes. Under the Bureau of Sanitation's Exclusive Franchise proposal, waste hauling operators would have the opportunity to serve multiple franchises (i.e., one or more of the 11 proposed franchise waste sheds).

2. Will there be on-site separation as currently done at residential sites?

AB 341, California's mandatory commercial recycling law that went into effect July 1, 2012, requires that haulers either source-separate recyclables or subscribe to a recycling service through a mixed waste processing operator. There may be an increase in on-site separation as well as an increase in the utilization of recovery facilities. Under the current permit system, the City directly administers recycling at multifamily locations under voluntary participation by property owners. A franchise system, in conjunction with AB 341, would shift that responsibility directly to property owners. This would be applicable in either an Exclusive or Non-Exclusive Franchise system.

- a. If so, does that increase trash routes?

Yes. If franchised waste haulers and their clients opt for compliance with AB 341 through source separation, separate trucks will be needed to pick up trash, recyclable materials and green waste. Therefore, there may be an increase in the number of trucks hauling material, regardless of which type of franchise is implemented.

Proponents of Exclusive Franchising claim that routing efficiencies will be significant. However, to achieve maximum routing efficiencies with the commercial sector, businesses will need to change business practices significantly. Absent the ability of businesses to do so, routing efficiencies will be limited. Additionally, increased source separation through AB 341 compliance will further reduce (and possibly eliminate) those potential efficiencies. Significant environmental benefit from franchising can be achieved by requiring Clean Trucks under either an Exclusive or Non-Exclusive proposal.

- b. If not, how are collection sites located and sited and who owns them?

In the Bureau's Exclusive Franchise proposal, access to waste handling and recycling facilities would be among the evaluation considerations in an RFP process. However, the details of siting and location are not known at this time. The Bureau's proposal assumes that infrastructure would be owned by the franchisee. This gives the franchisee more leverage in controlling the cost of, and access to, waste handling operations. This would tend to result in waste facilities being developed based upon franchising area or corporate identity. To the extent that new recovery facilities are required, this increases the franchises investment costs in the short to mid-term.

In our Non-Exclusive Franchise proposal, siting considerations would be handled on a citywide basis. We propose that the City own or retain control over waste processing

infrastructure. This would allow the City to provide equal access to all haulers, have more direct control over information relating to disposal, and to stabilize the cost of waste disposal.

c. Will zig-zag routing and truck impacts will be eliminated through concentrated, defined service areas for exclusive haulers?

The City does not have a baseline from which to measure routing inefficiencies or truck impacts. Complete elimination of either will be extremely difficult to measure and achieve. While the potential for greater routing efficiencies exists conceptually under an Exclusive Franchise Arrangement, in reality elimination of both will not occur for the following reasons:

- State mandated recycling allows customers to choose to source separate or contract with a sorting facility to separate out recyclable material. Customers who choose to source separate will create the need for a hauler to send a separate truck for each separated material. For example:
 - If the model used by City forces is followed (Black, Blue, Green and Brown bins), up to four separate trucks may be needed to service a customer who previously required one truck. This will be the same under both Exclusive and Non-Exclusive models. Truck impacts will increase with source separation.
- Business practices will need to change significantly to allow maximum efficiencies. For example:
 - Businesses will have to reduce total trash to reduce the number of truck trips; or,
 - Businesses will have to restructure when the trash is generated or how it is stored to allow for efficient collection; or,
 - In extreme cases (like hospitals and motion picture studios) completely change their base business model (which is highly unlikely) to allow routing efficiencies to be maximized. For example, hospitals would have to stop generating food waste, pharmaceutical waste, radiological waste, biomedical waste, regular trash and HIPAA trash, each of which is handled differently.
- Should some routing efficiencies be achieved, truck impacts may be increased by having heavier loads on the City roadways.
- Exemptions proposed for Construction and Demolition (C&D), entertainment industry and medical service companies will have no impact on routing efficiencies or truck impacts for the significant market share represented by haulers servicing these businesses. For example:
 - The Department of Public Works reports that there are approximately 600 C&D haulers. For 600 haulers to exist, a significant number of job sites would need to exist;
 - Approximately 1,000 businesses within the City provide medical services (this includes 49 hospitals);
 - A Motion Picture studio reports that approximately multiple pick-ups per day are required to handle their refuse;
 - According to FilmLA approximately 21,749 locations for on-location filming occurred in the most recently completed fiscal year. This means that truck trips associated with these locations will not be part of the optimization of routing.

3. Why a 20-year cycle for vendors (10-year contract with two five-year term extensions)?

A hauler may only be incentivized to participate in the Exclusive Franchise system if the proposed contract length provides time for the amortization of company assets. The large service areas suggested by the Bureau require a lengthy contract, as companies providing service in each waste shed would require significant up-front investments in equipment.

4. How did the exemptions get determined?

The basis for a franchise centers on the privilege of operation in the public right-of-way, regardless of the type of waste stream or the source of regulation of the activity. In the Non-Exclusive proposal, no exemptions are required.

In the Exclusive Franchise proposal, the basis for exemptions have no relationship to the basis for a franchise. Instead, exemptions are made based upon objections to the limitations of an Exclusive Franchise proposal. The most significant exemptions include hospital and hazardous waste, construction and demolition (C&D) debris, and on-location film sites.

The Bureau recommends exemption of medical/pharmaceutical waste and other hazardous materials requiring special handling on the basis that they are not defined as "solid waste" under State Public Health code and the City lacks the ability to regulate the ultimate disposal of some of the waste. The basis for a franchise does not hinge upon the ultimate regulation of waste but rather the use of City infrastructure. For example, the City also lacks the ability to regulate the Gas Company (regulated by the Public Utilities Commission) but still has a Franchise for use of City infrastructure. Trucks disposing of medical/pharmaceutical waste use City infrastructure. This exemption was a result of opposition to the lack of choice and concern about service levels provided under an Exclusive Franchise. Approximately 1,000 businesses in the City provide medical and health services (49 hospitals and the rest include health clinics and convalescent/nursing care facilities).

The Bureau's rationale for C&D exemption centers on the intermittent nature of this activity and the fact that the City has an ordinance requiring proper recycling and disposal of C&D material. There are approximately 600 C&D haulers operating in the City. The Bureau has stated that it is too difficult to keep track of all C&D haulers. In reality, the Bureau knows currently issues permits to each hauler and therefore is able to keep track of them. The 600 haulers' trucks use City infrastructure and could not be expected to have any less proportional impact on City streets and air quality than conventional waste haulers. Therefore, exemption of these haulers is not warranted. The County of Los Angeles' franchise does not exempt C&D despite having a C&D ordinance in place. This was done for purposes of enhancing recycling requirements.

The Bureau's premise for exempting on-location filming is similar. The Bureau cites this activity as intermittent in nature and characterizes the waste from on-site filming as primarily mixed C&D. In reality, film companies do not go out on-location to build sets. On-location filming focuses on dressing sets. Film companies are generally

environmentally conscious and recycle heavily. Conversations with FilmLA and MPAA confirm this and indicate that the majority of waste from on-location filming consists of "crew waste" such as food and catering materials. The haulers that service on-location shoots use City infrastructure to do so. These haulers are small, niche haulers whose very livelihood is threatened by the Exclusive Franchise Proposal. This exemption was created in response to opposition to the Exclusive Franchise from the entertainment industry.

a. How does franchise work if there are multiple types of waste at locations?

In a Non-Exclusive system, a business or apartment complex owner would have the opportunity to search for a hauler that meets all of their waste hauling needs, including specialty waste hauling. In this model, the consumer holds the ability to select the hauler and to negotiate pricing as well as unique aspects of an agreement to suit specific needs.

In an Exclusive system, a business or apartment complex owner is subject to the franchise area in which the property is located. An Exclusive Franchise would require that all consumers in a particular franchise area use the franchise hauler as the only service option. Specialty waste haulers serving the Los Angeles-area market may not exist at this point. Additionally, consumers are subject to predetermined pricing with no possibility for negotiation.

5. How will franchise fees differ in amount and usage of them to current 10% fee?

The current 10% permit fee required under the City's AB 939 Private Hauler ordinance is deposited into a special fund for recycling programs (The Citywide Recycling Trust Fund). We anticipate this fee to be reduced in response to AB 341, which requires commercial recycling, and therefore would require less funding to administer recycling programs. The additional percentage calculated as a franchise fee would be deposited into the General Fund. The amount is to be determined by the City Council and varies widely from city to city. This Office estimates a range of \$20 million to \$30 million in General Fund revenue.

6. Any consideration to merely increasing the 10% as a revenue generator?

The current 10% AB 939 permitting fee is deposited into the Citywide Recycling Trust Fund. Increasing this fee would not generate revenue to the General Fund. Additionally, increasing the permit fee in the absence of additional requirements pursuant to AB 341 places the City at risk of non-compliance with state legislation, inclusive of Proposition 26. Additionally, it is clear that overlap may exist between a franchise fee and the current AB 939 fee that the Bureau is allowed to administer. We are anticipating being able to reduce the AB 939 permit fee from the current level of 10% once a franchise is in place.

7. Any consideration to having City personnel absorb these new functions at 100,000 locations?

This is certainly an option. This may also be a more attractive option than an Exclusive Franchise arrangement with private haulers. However, the City currently does not have

the resources or infrastructure to service larger multifamily apartment complexes and businesses. Doing so would require significant staffing and siting considerations for truck yards, fueling facilities, waste processing, recycling and disposal.

We view a Non-Exclusive Franchise as allowing the City to achieve environmental goals more quickly and with less effort than the use of City forces for multi-family and commercial waste streams.

8. Explain why there is a delay to 2016/2017 to implement Exclusive?

Under California Public resources Code Section 49520, cities must provide a minimum five-year notification to existing haulers when considering the implementation of an Exclusive franchise system. In accordance with state noticing laws, the Bureau of Sanitation provided a seven-year notice for multifamily waste handling to permitted private waste haulers in July 2006, and a five-year notice for commercial waste handling in December 2011. Therefore, no Exclusive franchise system may be fully implemented until 2016, noting that the Bureau's proposal combines multifamily and commercial waste handling.

We believe that the environmental benefits and potential City revenue can be achieved sooner under a Non-Exclusive Franchise than under an Exclusive.

9. Impact on private waste haulers regarding routing efficiencies requiring clean trucks, maximizing waste diversion, safe working conditions, etc. Can (these objectives) be done in an alternative manner as part of the 10% permit fee? How does the RFP mandate differ from the same issues being imposed via the current admin fee permit (10%)? (This Office interprets "RFP mandate" to refer to an Exclusive Franchise).

These questions are answered collectively in the following response.

The existing waste hauler permit system established under AB 939 does not enable the City to address many current waste management challenges such as compliance with State mandates, City diversion goals, and the environmental and health impacts of waste hauling. Some of the benefits of a commercial waste franchise, as stated in our report, that are likely not achievable in the current permit system include:

- Providing a consistent and transparent level of service to customers at competitive rates;
- Increasing accountability through high performance standards;
- Structured efforts to reduce environmental impacts;
- Addressing impact on City infrastructure;
- Providing a structural revenue source; and,
- Ensuring living wage standards.

We believe these objectives can be achieved in both an Exclusive and Non-Exclusive Franchise. A Non-Exclusive Franchise does not involve an RFP. Instead it is a standard set of criteria that is open to all current waste haulers who opt to continue operating in the City.

10. Does the RFP require one hauler per franchise or can multiple haulers combine in a collective bid?

The Bureau has indicated that a consortium of haulers may participate in the RFP process. This does not, however, answer questions of service availability to customers with specialty needs and raises additional questions regarding potential disparities in service between waste sheds.

11. How many personnel would be added to Sanitation to administer an Exclusive Franchise contract?

In the 2011-12 Budget, four positions were reassigned from other Bureau operations to support a new Multifamily Refuse Collection Franchise program. These include an Environmental Engineering Associate II, a Management Analyst I, a Systems Analyst II and a Clerk Typist.

Additional staffing needs will depend upon criteria established for a Franchise and more importantly, the way in which criteria, and enforcement of those criteria, are structured.

In an Exclusive Franchise, the City has ongoing involvement over many complex and detailed aspects of the franchise agreement and must therefore commit adequate resources for proper oversight including, but not limited to, the enforcement of the various requirements and customer support related to conflicts with the franchisee. In an Exclusive Franchise the burden of service is squarely on the City instead of on haulers. An Exclusive Franchise will require a significant ongoing expenditure of resources.

We believe that the extra requirements contained in an Exclusive Agreement will be less standardized than a Non-Exclusive Agreement and will generate the need for more staff, even if there are fewer agreements. In contrast, a Non-Exclusive Agreement would be more standardized than an Exclusive Agreement and subject to fewer unique requirements.

It is clear that a Non-Exclusive Franchise will require significantly less staff to administer and enforce than an Exclusive Franchise.

To put some perspective on monitoring requirements, the following illustrates the volume of Exclusive and Non-Exclusive agreements in sample cities.

Exclusive	Non Exclusive
Emeryville: 157 pages	Los Angeles County: 76 pages
San Jose: 230 pages	San Diego: 33 pages

12. Why is it required to deliver mixed waste to a diversion center? Is this contrary to the City's current position to require on-site separation?

AB 341 requires larger multifamily properties and businesses generating a certain level of solid waste to recycle. The law allows for either on-site separation (e.g. blue and green bin recycling) or subscription to a recycling service that provides mixed waste processing. This option is made available because many businesses and apartment

buildings have certain challenges with regard to on-site separation such as infrastructure and space issues. A commercial waste franchise would be consistent with these requirements.

Residential refuse curbside collection, which is operated by City forces, is currently structured for on-site separation through the provision of refuse (black), recycling (blue), green waste (green) and manure (brown) bins. City forces use separate trucks making separate trips to support on-site separation, which will occur also with multi-family and commercial customers.

13. Does this new Exclusive or Non-Exclusive Proposal require an EIR process?

The City Attorney is preparing a response to this matter, inclusive of California Environmental Quality Act (CEQA) considerations. The County of Los Angeles, in its recent implementation of a Non-Exclusive Franchise for commercial waste collection in unincorporated areas, complied with CEQA through a Negative Declaration and was not required to engage in a full EIR process.

14. HF&H Study dated August 24, 2012 – has the CAO evaluated?

The HF&H report was commissioned by the Bureau of Sanitation with the following study objectives:

a. Survey Los Angeles County cities to compare the cost of exclusive and non-exclusive cities.

Finding: The study took into account cities in Los Angeles County that have a commercial franchise fee (approximately 42 of 88 cities). The consultant determined that rates in non-exclusive cities cannot be verified since there is no official rate schedule. Additionally, rates may be largely contingent on negotiations with each customer. Using a more global net cost per ton methodology, the consultant determined that the median cost of commercial service was similar between exclusive and non-exclusive cities surveyed.

CAO Comments: Without commenting on the consultant's methodology, it stands to reason that there is sufficient market competition in the larger Los Angeles region and beyond, enabled by free enterprise, to help maintain some level of rate stability. We would not expect this to be the case in an environment of diminishing competition (implementation of an Exclusive Franchise). Additionally, while other cities may not require rate information under their franchise agreements, we propose that the City's Non-Exclusive Franchise agreements require reporting of customer lists and rates charged to customers (which is a requirement in Los Angeles County's recently implemented Non-Exclusive Franchise). This would be instrumental in auditing of gross receipts as well as in evaluating the success of the franchising effort relative to other best practices.

b. Perform a franchise fee analysis in LA County cities and estimate the amount that a franchise fee might generate in the City of Los Angeles.

Finding: Franchise fees in other Los Angeles County cities range from 2% to 27% of gross receipts. The consultant estimates City revenue of \$24.9 million based on a 10% franchise fee. This is consistent with the \$20 to \$30 million range referenced in the CAO report.

CAO Comments: Our recommended economic analysis will also examine franchise fee options other than percentage of gross receipts to determine whether the City and constituents may be better served by other options, such as a flat rate or hybrid structure, and include a sensitivity analysis on customers and other stakeholders.

c. Describe the applicability of “rate caps” for the City.

Finding: The purpose of rate caps, or rate bands, is to ensure reasonable customer rates in a system with limited competition. They may be most beneficial in a Non-Exclusive system involving a small number of haulers.

CAO Comments: In the City of Los Angeles, we would anticipate sufficient competition among existing haulers in a Non-Exclusive Franchise to eliminate the need for rate caps. There are currently approximately 140 permitted waste haulers operating in the City and several hundred serving various other needs that could be operating under a franchise system. If a multi-family or commercial customer was not satisfied with the cost of waste hauling, they could choose to change providers under a Non-Exclusive Franchise.

15. How do the small hauler enterprise zones work? How are (enterprise zones) determined in relation to small haulers' locations, and the location of separation sites?

Council Motion 10-1797-S4 instructed the Bureau of Sanitation to report on the designation of certain number of franchise zones as small enterprise zones to provide opportunities for small haulers. In the utilization of franchise service areas, proposers must demonstrate their ability to service the area for which they are proposing. Therefore, the viability of smaller haulers in an Exclusive Franchise may be directly proportional to the number of franchise service areas. The administrative burden on the City and potentially other constraints would be heightened if the number of franchise service areas increase. The Bureau in its report dated August 23, 2012 recommends that an Exclusive Franchise use the City's Business Inclusion Program, which facilitates sub-contracting opportunities, as an alternative to enterprise zones to ensure more participation by small haulers.

In a Non-Exclusive franchise, all existing haulers have an equal opportunity to participate. This structure is conducive to smaller and/or specialty haulers without the need for exemptions. The issue of enterprise zones in the context of competing for franchise service areas is therefore irrelevant.

16. How does the Non-Exclusive process mandate system-wide changes?

A Non-Exclusive process provides significant leverage in mandating system-wide changes including, but not limited to, the following areas:

- High standards and proper incentives for recycling and green operations, underscored by the recent implementation of AB 341 mandatory commercial recycling, clean truck requirements under AQMD Rule 1193 and other regulations, etc;
- Adequate leverage on infrastructure - including the option for the City to own or control diversion and processing facilities - which would be driven by citywide needs and not on individual wastesheds;
- Sufficient accountability through remedies for non-compliance with diversion requirements (the County in its Non-Exclusive Franchise instituted liquidated damages and other contract termination clauses);
- Transparency through adequate reporting and monitoring; and,
- Sustaining a competitive market place which is key to maintaining price controls and service quality, where the City avoids having to retain a large amount of resources to enter a new industry.

17. Can an independent economic analysis be proposed and completed prior to implementing either system?

The CAO report recommends an independent analysis of the economic impacts of franchised commercial waste hauling from the City's current list of qualified consultants. The study would examine options for the structure and revenue potential of a franchise fee and impacts on the various stakeholders including, but not limited to businesses, landlords and tenants, and public facilities. Among the objectives of a franchise, we believe a franchise fee should be sized at a level that maximizes revenue but that does not unreasonably burden customers. A task order can be issued immediately upon Council approval of the CAO report. We believe a study can be completed in time for our report back to Council in February 2012 (per our timeline) on implementation details of a Non-Exclusive Franchise.

18. Bureau of Sanitation strategic plan – would it include City resources assuming these new duties?

The CAO report, in support of a Non-Exclusive Franchise, recommends that the Bureau develop a strategic plan for commercial waste infrastructure such as sorting, transfer and alternative processing facilities. A Non-Exclusive Franchise allows the City to maintain leverage over waste hauler activity through direct control of waste handling infrastructure. Exclusivity diminishes this leverage as waste haulers typically have full control of assets, infrastructure and waste commodities. This would largely be a one-time effort drawing from the Bureau's current resources, including work performed on the draft Solid Waste Integrated Resources plan. We do not anticipate new or ongoing resources for this effort.

19. If the City implements either plan, and it is determined that the proposed goals are met and it is cost efficient, does that place the City's operation of single-family units and small apartments to a future RFP?

The City can certainly opt to extend franchising to residential refuse collection which is currently provided by City forces. However, this requires further and careful evaluation from beyond a fiscal standpoint that is better left for a future and more informed discussion (i.e., following implementation and evaluation of a commercial franchise). Other municipalities are currently providing solid waste services through a combination

of municipal and contracted labor. A few examples of local cities that service residential collection through their own labor force and franchise commercial collection include Long Beach, Pasadena, Burbank and San Diego.

20. The CAO reports a 2013/14 implementation and revenue of \$20 to \$30 million. Is this revenue above the 10% current \$24 million?

The estimated revenue of \$20 to \$30 million represents General Fund receipts to be derived from a franchise fee. This is above and beyond revenue received from the AB 939 fee administered under the City's Private Hauler ordinance, which has restricted uses. As previously stated, it is clear that overlap may exist between a franchise fee and the current AB 939 fee that the Bureau is allowed to administer. An effort to maximize a franchise fee while minimizing the impact on customers will reduce the overall size of the AB 939 fee revenue.

21. The CAO report expects revenue in 6-months. Is this aggressive timeline to get \$20 million to \$30 million in General Fund revenue in 2013-2014 feasible?

- The timeline in the report is aggressive. However, implementation of a Non-Exclusive Franchise will not require the issuance of a request for proposals.
- The timeline is a stretch goal we set for ourselves but achievable provided that our staffing levels do not deteriorate. We anticipate the addition of one CAO staff member to assist in the implementation of the franchise system.
- The timeline also anticipates the most favorable outcome on certain processes such as a finding of negative impact in the CEQA process.
- The ability to achieve \$20 million to \$30 million in General Fund revenue will depend on the ultimate fee structure approved by the City Council and Mayor. For example:
 - Whether any Franchise Fee is paid at the beginning of the franchise period or as periodic installments during the franchise period.
 - Whether any Franchise Fee is acceptable. Acceptability can be determined by whether there are corresponding offsets to other fees, such as the City's existing AB939 Fee, by the ultimate structure of the Fee and by whether specific franchise requirements are phased in over a period of time.
 - Whether a voluntary non-exclusive franchise opportunity is created and whether participation in the voluntary opportunity is achieved.

22. The Department of Public Works believes that a \$30 million CAO projection at 14% is fairly high, a stark increase in fees and will hurt business. Can businesses absorb a 14% fee in a year to a year and a half?

The \$30 million projection still requires evaluation before it can be deemed high or low. Franchise fees for waste franchises in other jurisdictions vary from 2% to 27%.

The Department of Public Works appears to be assuming that the Franchise Fee will be set at 14 percent instead of a lower amount and that the 14 percent will be an additional cost to haulers on top of the existing AB939 Fee. However, in reality, implementation of any Franchise will logically require the City to reduce the AB939 Fee substantially. A substantial reduction in the AB939 Fee will, at least partially, offset any incremental

financial impact of a Franchise Fee. This will reduce the impact of a Franchise Fee, if it is passed through to customers. However, it is also very likely that some haulers may choose to not pass through Franchise Fee costs to some or all of their customers.

The Chamber of Commerce and an assortment of other business interests have made it clear that implementing an Exclusive Franchise system that removes the ability of individual businesses to choose their own waste hauler (and replaces it with the City's choice) is the single most damaging move to local businesses. The Franchise Fee is a secondary concern, especially since details of the Fee are not yet developed.

A Non-Exclusive Franchise preserves local, small waste hauling businesses and jobs associated with those businesses. An Exclusive Franchise damages these small waste-hauling businesses the most by immediately eliminating all residual value of existing business arrangements within the City.

An Exclusive Franchise damages businesses by eliminating their leverage over their hauler and requires every business to work through the City to resolve service issues.

Exclusive Franchises are more labor intensive and expensive to administer and will divert more revenue from the provision of other City services that are also important to business (police and fire service, road repair, land use and permit approvals).

23. The Department of Public Works states that Exclusive franchising gives the City permission to negotiate higher environmental standards than a non-exclusive system. Is this accurate?

No. Environmental standards for both Exclusive and Non-Exclusive have yet to be determined. The only environmental goal that appears to have the potential to differ under Exclusive and Non-Exclusive systems is routing efficiencies. However, it is far from certain that routing efficiencies under an Exclusive system will result in significantly different environmental impacts, especially if exemptions are approved as proposed by the Department of Public Works (hospital/medical facilities, entertainment industry, construction and demolition hauling) and as requested by different special interest groups (religious organizations and non-profits).

Environmental impacts from Clean Trucks and Waste Diversion are equally attainable under Non-Exclusive and Exclusive.

24. The Department of Public Works states that efficiencies will be gained in the core of the industry rather than in the subsectors (unique businesses). Do you agree?

This rationale may work for Multi-Family residential properties – assuming that large blocks of these properties choose not to source separate. However, commercial customers have a wide variety of needs, business practices and waste generation patterns. Assuming that a “one size fits all” service model will work for an undefined “core industry” appears simplistic.

25. In an Exclusive Franchise, the Department of Public Works states that haulers who cut corners will be identified in the "vetting process". How will this be possible?

When participating in an RFP process it will be difficult to predict how a company will perform 10 years down the road, once they have gained monopoly market power within the Franchise Area.

In terms of evaluation hauler performance within the City, we do not know how the Bureau will evaluate haulers performance. Especially since the Bureau reports that they do not have enough resources to adequately audit AB939 payments from haulers nor do they know the customer lists for each hauler.

In terms of evaluating hauler performance outside the City, every hauler with a Franchise agreement outside the City limits will have had some level of complaints. Evaluating those complaints will be a significant effort and may not even be relevant. For example, if another jurisdiction is so unsatisfied with the performance of their exclusive franchise hauler that they consider eliminating or restructuring their system, should that mean their hauler would lose points in the evaluation of their response to the City's RFP? Incorporating this into the RFP process in a meaningful way could significantly increase the time and effort required to complete the selection process.

26. Does the exclusive franchise offers a more measured and strategic approach as reported by the Department of Public Works?

The exclusive franchise is not strategic in the sense of long-term policy flexibility. The process of awarding Franchises will require that the City provide some guarantees to companies looking to make equipment and infrastructure investments. These guarantees along with the financial and political power accrued by companies awarded franchises will dilute the future power of the City to achieve additional environmental, financial and political goals, as well as service level improvements. Jumping into an exclusive franchise for political reasons, and ignoring the needs of the City's service constituents, is not strategic and is not measured appropriately.

Implementing a Non-Exclusive Franchise that meets every service constituents' needs, provides the City with revenue and also implements environmental protections is actually the more measured and strategic approach

27. The Department of Public Works indicates that the best way to protect the customer is to provide ample notice - six months to one year is too short. The Bureau of Sanitation indicates that under an Exclusive Franchise a Business assistance program will be provided to help those who can't bear the burden. In addition, a phased in fee schedule will also be provided.

The City could easily provide an assistance program and phased in fee schedule in either system.

The best way to protect the customer is to listen to the customer's needs and provide a system that meets their needs. The customers are ALL saying that the ability to choose their own hauler is of primary importance to them and the ONLY system that allows that is the Non-Exclusive system.

An assistance program for medium to small haulers with less access to capital is appropriate under a Non-Exclusive system, where these haulers continue to exist. An assistance program for haulers under an Exclusive system where only the largest haulers will exist may not be appropriate. Costs to the City of providing an assistance program for business customers will decrease net revenue to the City from a Franchise system.

Under both Franchise scenarios, increases in costs from the franchise for haulers should be mitigated by an offsetting decrease in the AB939 Fee. This will result in a lower incremental cost to the hauler that will be passed through to customers.