REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date:	August 23, 2012	CAO File No. Council File No. Council District:	0150-09777-0000 New All
To:	The Mayor The Council		
From:	Miguel A. Santana, City Administrative Officer		
Reference:	Board of Public Works Report dated February 13, 2012		
Subject:	**COMMERCIAL AND MULTIFAMILY REFUSE COLLECTION IN THE CITY**		

SUMMARY

You requested that we review the Bureau of Sanitation's request to establish an Exclusive Franchise system for refuse collection from multifamily and commercial properties within the City of Los Angeles. The Bureau's franchising proposal designates 11 collection areas as subdivisions of the City's six existing wastesheds with one primary hauler per collection area. The proposal also combines multifamily and commercial waste collection with the exemption of certain waste streams. The primary goals of this proposal are to minimize the impact of private refuse collection vehicles through routing efficiencies; require clean fuel vehicles; maximize waste diversion and promote safe working conditions. Additional details of the Bureau's proposal are included in Appendix A.

The goals intended by an Exclusive Franchise are worth pursuing. However, we are recommending a Non-Exclusive Franchise as a preferred alternative. We believe that a Non-Exclusive Franchise can meet the same objectives but with less impact to the City, the City's businesses and institutions, and landlords and residents of multi-family residential properties. Our main concern with an exclusive system is that it significantly reduces the City's leverage over the waste handling market, negatively impacts haulers and customers as expressed by various stakeholders, and is not timely in generating much needed revenue for the City.

In a Non-Exclusive Franchise, waste haulers providing bin, dumpster, or roll off service to multifamily, commercial, industrial and institutional properties in the City will be required to obtain a franchise agreement. All haulers that meet franchise requirements established by the City and execute a franchise agreement may continue to serve their customers. The City would maintain leverage in its franchise goals through an open competition environment where it can more feasibly exercise policy that would not be obstructed by any one hauler or haulers' control of the local waste hauling market. Additionally, the City can begin to see revenue as early as 2013-14 in contrast to a combined exclusive system which could not occur any earlier than 2016-17. The revenue possibilities are recommended for further study although we currently estimate $20 million to $30 million in potential General Fund receipts for a full fiscal year (notwithstanding any franchise fee step up options that the Council may want to consider. The City's contracting requirements, including the Living Wage Ordinance, would apply in franchise agreements.

The City's refuse collection industry can be defined by two primary sectors – Single-family Residential and Multifamily Residential/Commercial ("Commercial"). The Single-family Residential sector is serviced by the Bureau of Sanitation. The Commercial sector is serviced by private haulers under an open market system. Franchising refers to the granting of permission by a local government to one or more service providers to use the public right-of-way, usually in exchange for a fee. The discussion of refuse collection franchising is defined by three basic types of markets:

- An Exclusive Franchise system – limited to one primary hauler per district. A franchise fee can be charged.
- A Non-Exclusive Franchise system – limited to any number of haulers that can meet basic criteria established by the City. A franchise fee can be charged.
- An Open Market system – allows any and all haulers without regulation by the City. Permit and licensing structures may exist within an open market. There is no franchise fee.

The discussion of alternate waste collection frameworks has taken place through at least the last two decades. The concept of establishing a franchise system for the multifamily/commercial sector grew out of discussions initiated by this Office during 2009-10 on how to achieve more structural General Fund revenue while continuing to deliver services in a practical manner. This Office offered a similar suggestion in 1992. The City Attorney has not determined that Proposition 26 is a limiting factor in the City's ability to assess a General Fund Franchise Fee. The need for the City to explore options from the current open market approach, apart from revenue considerations, is discussed in Appendix B.

While the Bureau's report recommends implementation of an Exclusive Franchise, we have evaluated both Exclusive and Non-Exclusive Franchises equally and with open minds in order to recommend what we truly believe is the best case for the City. We recognized the following as guiding principles in this process:

- Providing a consistent and transparent level of service to customers at competitive rates.
- Increasing hauler accountability through defined performance standards and increased oversight and leverage.
- Reducing environmental impacts (i.e., Zero Waste - increase diversion and recycling and reduce need for landfills; improve air quality).
- Addressing impact on City infrastructure (i.e., roads).
- Increasing General Fund revenue.

In our review process, we gave careful consideration to the Bureau's report (our comments are included in Appendix C), conducted our own additional research, and sought input from any and every stakeholder who would meet with us as identified in Appendix D (applicable comments and literature included). Several cities of interest within the state and nationally have been researched in order to assess service options and potential best practices (Appendix E). We have reviewed other franchise systems in the City of Los Angeles for this purpose, as well (Appendix F).
The following supports our recommendation for a Non-Exclusive Franchise:

- **A Non-Exclusive Franchise has more immediate revenue potential.** The State code's five year public noticing requirements only address Exclusive Franchises. In the Bureau's proposal for a combined exclusive multifamily/commercial system, revenue may not be realized until 2016-17 in view of the five-year notice issued to commercial haulers on December 11, 2011. A franchise system and associated fees under a Non-Exclusive system could be implemented sooner than that, potentially without a Request for Proposals which can add significant time and resources to the process. Franchise fee structures are recommended for review (percent of tonnage, flat rates, etc.) in the economic analysis to identify opportunities for a revenue structure that is sustainable and provides for a reasonable level of certainty and predictability. We currently estimate between $20 million to $30 million in General Fund revenue which could be realized as early as 2013-14.

- **The City's waste diversion goals can be met in a Non-Exclusive Franchise.** The City can include sufficient parameters and requirements within Non-Exclusive Franchise guidelines to meet or exceed State and Council/Mayor directed diversion and environmental goals (RENEW LA, Solid Waste Integrated Resources Plan, etc.). The extent and success of diversion would depend on how the franchise system and agreements are configured and enforced, with major considerations to include the following:

  - High standards and proper incentives for recycling, underscored by the recent implementation of AB 341 mandatory commercial recycling;
  - Adequate leverage on infrastructure (including the option for City ownership of facilities) to address pertinent policy issues such as alternative technology, food waste processing (which comprises nearly 30 percent of City commercial waste stream) and fair labor practices;
  - Sufficient sanctions and penalties for non-compliance of diversion requirements; and,
  - Business practice transparency through adequate reporting and monitoring measures.

  Many cities and counties across the State have implemented franchise systems to increase diversion and recycling. While many in Los Angeles County have adopted exclusive systems for commercial waste handling, larger jurisdictions within have trended toward non-exclusive systems, including unincorporated Los Angeles County, Long Beach and Pasadena. Comparable metropolitan cities such as San Diego and Houston have Non-Exclusive Franchises (other major cities such as Chicago, New York, Phoenix and Philadelphia have open market systems).

- **A Non-Exclusive Franchise preserves leverage for the City and its constituents.** In an Exclusive Franchise the balance of power between the City and the franchisee can shift dramatically. This could significantly reduce and/or eliminate the ability of the City to achieve future goals – such as alternative technology facilities or waste reduction. Among issues that contribute to this loss of leverage: a) investment in refuse processing facilities by the franchisee results in financial constraints; b) the ability to control prices and service levels under an Exclusive Franchise is illusory (Los Angeles County staff cited difficulties with its Exclusive Franchise for residential service in Antelope Valley communities due to the dominance of limited hauler(s) over such a large area); and, c) under an Exclusive Franchise the refuse stream is owned by the franchisee and to redirect that stream can be costly. To maintain leverage with the City and its constituents, it may be appropriate for the City to develop any required waste processing facilities.

- **A Non-Exclusive Franchise does not trigger immediate local job losses to the detriment of small local businesses.** A Non-Exclusive Franchise system is consistent with the City's support of small local businesses. There is a greater likelihood of preserving responsible small haulers in the industry over an Exclusive Franchise system. An Exclusive Franchise system has the potential to reduce the value of medium to small local hauling businesses dramatically (possibly to zero) over a very short period of time – regardless of whether they operate responsibly or not. A Non-Exclusive system preserves the value of medium to small local businesses that operate responsibly. A Non-Exclusive system also supports the existence of haulers that operate in niche markets. An Exclusive Franchise system can only support haulers in niche markets by creating an exemption – which makes it more difficult to ensure that those haulers are operating responsibly.

- **A Non-Exclusive franchise preserves an open, competitive marketplace which is the most significant factor in maintaining price controls, and where the primary business model concerns business-to-business relationships, not business-to-City relationships.** The potential for increases in the cost of refuse service under an Exclusive Franchise was a significant concern expressed by stakeholders who met with us. The City also avoids being the market-maker and having to retain a large amount of resources to manage an industry that is capable of managing its own business relationships. While there may be some discrepancy between the costs of disposal for similarly situated customers in this market, this may not be a critical flaw in the marketplace.

- **A Non-Exclusive franchise system allows the City to have fewer costs of administration and enforcement.** It seems clear that implementation of any franchise system, Non-Exclusive or Exclusive, will increase the cost of administration and enforcement for the City. However, administering a Non-Exclusive system is confined to the framework for the industry instead of every detail of an industry as is common under an Exclusive system. In addition, under an Exclusive system, the primary business model is business-to-City, meaning that all complaints and concerns will become the responsibility of the City. Ultimately, the costs will be determined at a later date after the City decides on which system to implement and when the details of the franchise agreements are known.

We do not recommend an Exclusive Franchise System for the following reasons:

- **An Exclusive Franchise is capital intensive** given the size and number of service locations (approximately 100,000) in the City which puts major haulers at a significant advantage in both competing for a franchise and maintaining infrastructure requirements.

- **An Exclusive Franchise has a more significant potential for litigation and delays in achieving City goals (including net revenue).** We do not believe an exclusive system is more beneficial to the City. Therefore, the potential extra expense and delay in implementation of a system is also not recommended.

- **The City's leverage over waste haulers' performance is diminished.** An exclusive system does not offer a clear advantage in service levels provided. Almost every constituent we met with expressed concern that their ability to have their specific unique needs met satisfactorily will be compromised, particularly the hospital and entertainment industries. In a Non-Exclusive

Franchise, the ability of customers to choose a provider that meets unique and special needs will be preserved (and not rely on the City to choose for them). A Non-Exclusive Franchise would eliminate the need for policy exemptions in this regard.

- **An Exclusive Franchise could compromise the City's desire to implement preferred alternative waste processing technologies** and associated economic benefits (eg, rights to renewable energy). The City could also be limited in the ability to develop, expand and operate waste processing and recycling infrastructure (which would also support union jobs).

- **Fewer Agreements to monitor in an Exclusive Franchise may not translate into less work.** Exclusive Franchise agreements tend to be significantly longer and more detailed than non-exclusive agreements. This would mean more monitoring and enforcement effort per agreement.

- **An Exclusive Franchise does not appear to offer the routing efficiencies described by the Bureau and the Los Angeles Alliance for a New Economy (LAANE).** While routing efficiencies will exist, to achieve the most significant routing efficiencies, businesses will need to implement significant changes in business practices (for example, reducing waste generation and changing the type, timing and frequency requirements of waste pickups). Increasing recycling by requiring on-site source separation will require separate truck trips, partially offsetting the ability to achieve routing efficiencies. Additionally, there is currently no baseline to measure the impact of private hauler vehicles on roads, traffic congestion and air quality, which would be a primary consideration in assessing a routing efficiency argument.

- **An Exclusive Franchise could be viewed as anti-business at a time when the City needs to be supportive of business, especially local small businesses.** The Chamber of Commerce, the entertainment industry, the hospitals, the haulers (both small and large), a parcel service and the apartment community have all objected to an exclusive system. The lack of flexibility and personal choice in an exclusive system is the biggest concern. The cost of a franchise fee is not a significant concern.

On a more general note, the Bureau proposed a number of exemptions based on how certain waste streams were characterized and who regulated them, such as medical waste, construction and demolition, recyclables and certain green wastes. Exemptions based upon the regulator of the waste stream do not recognize the basis for a Franchise system. The basis for a franchise system, whether exclusive or non-exclusive, is compensation to the City for the use of the City infrastructure (instead of private property) as a primary means of conducting profit-making business operations. Therefore, the nature of waste or which agency regulates the disposal of the waste is irrelevant. A clear example is the Gas Company, which utilizes pipelines located in the City infrastructure and whose business operations are not overseen by the City.

Next Steps

The following are some of the major considerations for implementation of a Non-Exclusive Franchise along with an estimated timeline.

- The City can franchise refuse collection services under existing ordinances and the Charter. City ordinance allows for up to 12 percent of revenue collection on gross receipts. Ordinance updates may be required for the franchising alternative and/or terms eventually directed by Council.

- The recommendations of this report only request Council approval of a policy statement for further study. Approval of a program and ordinance relative to municipal solid waste handling services is subject to the California Environmental Quality Act (CEQA) which requires disclosure on a project's potentially significant impacts on the environment and any necessary mitigating measures. The Council will first need to provide clear direction on the scope of the franchise system proposed to be adopted, inclusive of franchise terms and agreement criteria, before a CEQA compliance strategy can be assessed.

- The original purpose in beginning the conversation regarding franchising of refuse collection was to restructure City services in a method that allowed for a structural increase in General Fund revenue. We believe that the Mayor and Council should direct the CAO and Chief Legislative Analyst to work with Sanitation and the Board of Public Works on the implementation of this proposal.

An inclusive process for establishing the actual City criteria for issuance of a Non-Exclusive Franchise and implementation of the Agreements should be conducted. This should include:

- Outreach to Haulers, Multi-family and Commercial representatives and political offices.

- Further study on the economic impacts (sensitivity analysis) of a franchised system with the assistance of the Office of Economic Analysis, as necessary (special fund reimbursement for an independent study may be handled through a Financial Status Report).

- Actual drafting of a formal Non-Exclusive Franchise Agreement and approval by the Council and Mayor.

- Identification of an administration and enforcement strategy and any related resources.

- Formal notification of haulers of the final Non-Exclusive Franchise Agreement with an opportunity to execute and return the Agreement prior to the effective date of the Non-Exclusive Franchise.

- In recognition of maximizing diversion and recycling infrastructure opportunities through franchising, we recommend that Sanitation develop a strategic plan for commercial waste infrastructure such as sorting, transfer and alternative technology processing facilities.

The following is an estimated albeit aggressive timeline for this process:

Non-Exclusive Commercial Franchise Timeline*

Estimated Date	Task/Milestone
August and September 2012	Council cosideration of Policy Direction
September through December 2012	Outreach on Agreement Criteria
January 2012	Recommend Agreement Criteria
	Recommend Administrative/Enforcement Strategy
February 2012	Council consideration of Recommendations/Begin CEQA Review
March 2012	Draft Formal Non-Exclusive Agreement
May 2012	Council consideration of CEQA (as applicable)/Final Ordinance
April through May 2012	Execution of Agreements
June 2012	Franchise Award Notices
July 1, 2013	Beginning of New Non-Exclusive Franchise
*Schedule subject to assessment of CEQA requirements, as applicable.	

For ease of reference, the franchising discussion is divided into the following appendices:

A – Major Elements of Sanitation's Proposed Exclusive Commercial Waste Franchise
B – Need for Options to the Current Open Market System
C – Scope and Guiding Principles of a Commercial Waste Franchise
    Review of Bureau of Proposal
    Clarifying Assumptions on Commercial Waste Franchising
D – Stakeholder Input
E – Comparables – Commercial Waste Franchise Profiles in Other Jurisdictions
F – Other City of Los Angeles Franchise Agreements
G – Scope of Work for Economic Analysis
H – Existing Mandates Supporting a Commercial Waste Franchise

RECOMMENDATIONS

That the Council and Mayor:

1. Approve a citywide policy for implementation by July 1, 2013 of a Non-Exclusive Waste Hauler Franchise for the collection of solid waste from commercial, industrial, institutional and multifamily (privately serviced) properties in the City of Los Angeles;

2. Authorize the City Administrative Officer (CAO) through the Office of Economic Analysis to issue a task order(s) for independent review from a list of qualified consultants for an analysis of economic impacts of franchised solid waste hauling in the City of Los Angeles for multifamily and commercial solid waste (refer to Exhibit G as contained in this report for specific scope items);

3. Direct the Bureau of Sanitation to develop a strategic plan within 90 days for commercial waste infrastructure such as sorting, transfer and alternative technology processing facilities; and,

4. Instruct the CAO and Chief Legislative Analyst, with the assistance of Sanitation, to report with a final implementation plan for Council approval based on findings of the economic analysis, inclusive of recommendations for a fee structure and revenue potential;

FISCAL IMPACT

Structural revenue to the General Fund from a Franchise Fee can be anticipated. The amount is contingent upon further study and policy decisions on an appropriate franchise structure.

MAS:DHH/ER/EM:06130008

Appendices

Background

Solid waste handling for multifamily and commercial properties is currently done on the open market where haulers are required to maintain a permit with the City. There are presently approximately140 permitted private haulers operating in the City (or an estimated 700 if construction and demolition haulers are included). The discussion of franchising non-residential refuse collection has taken place for a few years now in recognition of the desire to evaluate options from the current permit system to capitalize on environmental and financial opportunities. Additionally, the passage of Assembly Bill 341, Mandatory Commercial Recycling, has underscored the overhaul of many jurisdictions' hauling services. With new state mandates requiring recycling services for commercial and multifamily units, a system with more control may be required for compliance. To date the following efforts have taken place in the discussion of options:

- In July 2006, Sanitation issued a seven-year notice to private waste haulers of the City's intent to consider alternatives to the current open market system.
- In the 2009-10 Midyear Financial Status Report (C.F. 09-0600-S159), the franchising of multifamily refuse collection was among concept reports included to address the City's long-term fiscal sustainability.
- In the 2010-11 budget, Sanitation was directed to proceed with establishing a multifamily franchise system that would provide a franchise fee to the City and expand recycling to all multifamily residents. Existing staffing resources were reassigned to this effort in the budget.
- Various stakeholder meetings and Council/Commission hearings have been held on the issue of franchising, with discussion further mobilized by specific proposals from LAANE and other industry representatives.

Commercial Waste Handling Policy Alternatives

Solid waste handling for commercial waste involves the collection and transport of refuse and recycling material generated by multifamily residential property (five or more units) and commercial/industrial businesses within the City of Los Angeles. Typical service includes refuse collection in bins and roll-off boxes and separate collection of recyclable materials and green waste. The timing and frequency of refuse collection and any special needs vary by industry but for the larger part of commercial customers refuse collection occurs once a week.

There are different policy options the Council may consider for the handling of commercial solid waste. The City can certainly adopt an approach that utilizes elements of each to best meet the interests of its stakeholders. The core elements of each are as follows:

- Exclusive Franchise - An Exclusive Franchise includes one or more solid waste enterprises that have the exclusive right to provide solid waste handling services. An Exclusive Franchise can include a limited number of waste haulers collecting waste within all or any part of a jurisdiction. The primary distinction of an exclusive system over other structures is a jurisdiction's direct leverage over customer rates and features associated with limitation in the number of waste haulers such as streamlined routing, service offerings and administration. Sanitation's proposal is a Multiple Exclusive Franchise system, as described in HF&H's analysis, wherein there are multiple designated collection areas serviced by a single hauler.

- Non-Exclusive Franchise – A Non-Exclusive Franchise is a system in which a jurisdiction allows solid waste collection services to be provided by private waste haulers but requires haulers to enter into a Non-Exclusive Franchise agreement. Under this type of system, customers would have a choice of more than one waste provider because the system is open to competition to all haulers that enter into an agreement with and meet guidelines and standards established by the jurisdiction. The waste haulers deal directly with the public and businesses in competing for customers. Thus, the franchise agreement would not dictate or set rates but could incorporate incentives to reduce customer trash bills through recycling. From a functional standpoint, it would not appear necessary to establish service areas for a non-exclusive system since haulers who meet franchise criteria would have citywide access.

- Open Market (status quo) – Under the open market system, customers individually arrange solid waste handling services with waste haulers. This system fosters private enterprise and enables customers to negotiate pricing and service options. Consolidations in the waste management industry have somewhat diminished the guiding principles of an open market system, thus compromising rate competition and service quality. Permit and licensing structures may exist within an open market and are regulated by local municipal code. The City of Los Angeles administers the AB 939 Private Hauler permit program which requires haulers to pay 10 percent of their gross receipts for waste tonnage processed. Although revenue from this program supports City-sponsored recycling programs and outreach benefiting multifamily and commercial customers, the program imposes no direct requirements for recycling and diversion among haulers.

Franchising in a Proper Context

With the implementation of more aggressive environmental policies in recent years and heightened awareness on diminishing waste disposal options in our local region, it is widely accepted that the current open market system for commercial refuse collection does not posture the City toward sustainable waste management. We believe a franchise would move the City in the right direction. It is important to clarify that certain objectives incidental to more aggressive City oversight over the commercial sector, for example, clean fuel requirements or improved worker safety, are not entirely contingent on the type of franchise in place (exclusive versus non-exclusive) or on having a franchise altogether. There are already regulatory frameworks in place setting certain minimum environmental and safety standards (Appendix H lists various existing environmental mandates that a franchise would support). However, a franchise does provide for additional leverage in the City's ability to meet or exceed those goals depending on the specific franchise requirements.

We reviewed the different studies providing comparisons in franchise waste handling options (HF&H, AECOM, etc.). The following provides clarification on objectives that could be achieved in either franchise structure as well as the major differences (with a notation on the preferred structure for objectives noted).

Common Objectives and Issues under both Exclusive and Non-Exclusive Franchise Systems

- Zero waste through increased recycling and diversion
- Structure and value of franchise fee and other fees (eg, administrative fee and adjustment of AB 939 fee)
- Improved hauler performance standards

- Enhanced reporting requirements
- Living wage standards
- Term of franchise
- Ability to require use of clean trucks (although there may be variance in enforcement responsibility between exclusive and non-exclusive structure)
- Ability to ensure safe working environment

Major Differences between Exclusive and Non-Exclusive (noting preferred system)

- Leverage downstream for City and customers (Non-Exclusive)
- Potential routing efficiencies (Exclusive)
- Timing of implementation/transition to franchise (Non-Exclusive)
- Risk of litigation delaying implementation (Non-Exclusive)
- Customer choice (Non-Exclusive)
- Rates, service levels determined by RFP (Exclusive) or market forces (Non-Exclusive)
- Preserves business value of haulers (Non-Exclusive)

In our analysis we considered comments from a wide variety of stakeholders. Commission meetings provided a venue to note specific stakeholder concerns. We continued stakeholder outreach by accepting meeting requests from all interested parties, including the landlord and tenants group, film industry and hospitals. Specific concerns were generally related to specialty waste questions and requests for exemptions from an Exclusive Franchise. A summary of major concerns put forward by these individuals is included in Appendix D.

In addition to stakeholder outreach, we researched other cities' arrangements to shed additional light on the necessity for the City to move toward a Non-Exclusive Franchise system. While 55 cities in the Los Angeles County area are in Exclusive Franchise agreements, these cities are not comparable in size or complexity of service area. The cities in Southern California that are of more comparable size, such as San Diego and Long Beach, have maintained Non-Exclusive Franchises in their areas to maintain a certain level of competition and consumer choice. These agreements, along with pertinent policy considerations specific to each city, are discussed in Appendix E.

Los Angeles City franchises are relevant to the franchising discussion to provide a context regarding what type of provisions may be included in a typical City franchise agreement. Considerations linking waste-hauling to similar franchise aspects, such as taxicab service geography and City regulatory mechanisms, are helpful to determine best practices for the City. A thorough discussion of current City franchise agreements is included in Appendix F.

Appendix A

Major Elements of Sanitation's Proposed Exclusive Commercial Waste Franchise

Sanitation proposes a combined multifamily and commercial exclusive franchise with 11 waste collection zones. Under an exclusive franchise, waste handling for multifamily and commercial properties would be combined into a single Request for Proposals. An estimated 100,000 service locations (accounts) will be transitioned to franchised waste haulers which can number from as few as 11 depending on RFP specifications for each franchise district. All services would begin following a five-year notice given to permitted waste haulers for commercial waste collection which expires in December 2016. The major elements of Sanitation's proposal are as follows:

- Combining multifamily and commercial waste collection with the goal of maximizing diversion, routing efficiencies and improved air quality.

- Establishment of a Franchise Administrative Fee (in addition to or supplementing the existing AB 939 Compliance Fee) to provide full funding for the administration and operation of the new system, including development of a Franchise Section in Sanitation.

- Potential for an ongoing franchise fee and one-time payments as General Fund revenues.

- Spread opportunity for multiple haulers through the provision of multiple franchise areas that allow small and larger waste haulers to compete.

- Franchised waste haulers will be responsible for securing all vehicles, equipment and supporting infrastructure, inclusive of recycling and disposal facilities, for service delivery.

- Franchised haulers will be responsible for providing comprehensive customer service and public education to provide a high quality service level and maintain public attitudes about recycling in a positive and proactive direction (creation of approximately 50 private sector jobs estimated from customer service requirements of proposed franchise system).

- Ten year franchise agreement term with two five year renewal options for a maximum term of 20 years. The ten year term is intended to enable franchised haulers to fully amortize their assets and also accounts for transition and implementation.

- Two year transition and implementation period to enable franchised waste haulers to secure equipment, infrastructure and staffing and conduct the necessary processes to transition approximately 100,000 service locations (accounts) in the City.

- Exemptions for certain material types, including:

    - Medical and pharmaceutical waste
    - Radioactive and other hazardous materials
    - Construction and demolition debris
    - Recyclables that have a value to the generator and are sold or donated
    - Green waste removed from a site as incidental to a landscaping business
    - Other specialty waste as designated by Sanitation (e.g., biosolids, oils and grease, etc.)

Appendix B

Need for Options to the Current Open Market System

Multifamily and commercial solid waste collection in the City of Los Angeles is currently provided by private waste haulers on the open market (under a permit system) where customers directly arrange for services with waste haulers. The service level disparities over 100,000 different locations served and the environmental consequences of more than 1,000[1] waste hauler trucks on City streets, warrant examination of whether a different system of waste management would result in better environmental, physical and economic outcomes for the City. The following describes the existing state of commercial and multifamily waste handling in the City that supports consideration of options.

- The bulk of the City's refuse comes from commercial and multifamily properties, generating 2.5 million tons or 70 percent of the waste that the City sends to landfills each year.
- The City has a Zero Waste goal of 90 percent by 2025 (currently at 63%)
  - The City is unlikely to achieve its goal without leverage over multifamily and commercial waste hauling (albeit new State regulations taking effect soon will add recycling requirements for commercial businesses, discussed further in this report)
  - According to CalRecycle, nearly 60% of commercial waste statewide is recyclable. The City through its Multifamily and LAUSD Blue Bin recycling programs achieves significant recycling through voluntary efforts of users but does not address the commercial sector.
  - The City has little control over the disposition of the recyclable waste stream beyond the collection point (i.e., recycling operators have significant discretion over how much of the material they receive is actually recycled versus landfilled, as largely determined by the quality of material received (contamination rates) and their processing infrastructure).
- There are currently over 140 permitted private waste haulers that provide refuse collection for approximately 100,000 locations in the City, contributing to traffic congestion and wear and tear on public roads that the City is ultimately responsible for maintaining.
- The City has not optimized revenue opportunities available from use of the public infrastructure by the private industry for delivery of services, particularly when that use comes at a significant cost to local government and tax payers in the form of the need for ongoing maintenance/repairs, environmental costs and quality of life issues.
- 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.
- The AB 939 Private Hauler Program, funded from a percentage of gross receipts to the Citywide Recycling Trust Fund, has a structural deficit and over time will not sustain City sponsored recycling operations at multifamily residences, other recycling incentive programs, and education and outreach. The program has fixed annual receipts of about $22 million yet costs escalate annually.
- Trash rates and service quality may vary widely and are largely contingent on regions served, customer demand and population density, among other factors. Customers are often unaware of the range of services provided by waste haulers and a description of their fee structure. Increased transparency of waste hauling rates and services, with recognition of certain service standards, benefits customers, residents and businesses alike.

---

[1] Estimated number of trucks from permitted waste haulers circulating the City per LAANE report, January 2011.

Appendix C

Scope and Guiding Principles of a Commercial Waste Franchise

Solid waste handling for commercial waste involves the collection and transport of refuse and recycling material generated by multifamily residential property (five or more units) and commercial/industrial businesses within the City of Los Angeles. Typical service includes refuse collection in bins and roll-off boxes and the separate collection of recyclable materials and green waste. The timing and frequency of refuse collection and any special needs vary by industry but for the larger part of commercial customers refuse collection occurs once a week. It should be recognized that while franchising would not include disposal facilities, waste processing from a zero waste standpoint would be an important consideration in a franchise framework.

Some of the major goals and guiding principles upon which the City may consider changing from the current open market system include:

- Providing a consistent and transparent level of service to customers at competitive rates.
- Increasing hauler accountability through defined performance standards and increased oversight and leverage.
- Reducing environmental impacts (i.e., Zero Waste - increase diversion and recycling and reduce need for landfills; improve air quality).
- Increasing General Fund revenue.

Given that the current system is not likely to support significant strides in any of these areas - particularly with regard to the State's 75% diversion mandate and untapped revenue opportunities - the question is not whether the City should move toward a franchise system but rather which franchise model to adopt. The economic impacts of each model will depend on a variety of factors and is recommended for further study through a third party sensitivity analysis through the Office of Economic Analysis. As the fiscal agent for the City, we have a significant focus on the revenue potential of a franchise model. Among the objectives of the sensitivity analysis is to properly size a franchise fee that meets acceptable revenue targets for the City but that does not present undue burden to customers.

Review of BOS Proposal

The Bureau has conducted an extensive stakeholder outreach and, based on input from that process, reports that an exclusive franchise will allow the City to:

- *Minimize the impact of private refuse collection vehicles by maximizing routing efficiencies.* The Bureau reports that this will result in the least amount of vehicles and therefore reduce impacts on City streets. Under the current open permit system, there are often multiple haulers servicing properties in close proximity to each other on the same day. The resulting impacts are increased truck traffic and traffic flow interruptions, collection noise and emissions that impact air quality. An exclusive system is expected to provide the greatest opportunity for routing efficiency because routes and schedules are organized and overlapping collection routes are minimized, particularly so in a system where multifamily and commercial collection is combined.

Comments:

- ✓ While routing efficiencies will exist, to achieve the most significant routing efficiencies, businesses will need to implement significant changes in business practices (for example reducing waste generation and changing the type, timing and frequency requirements of waste pickups); increasing recycling by requiring on-site source separation will require separate truck trips, partially offsetting the ability to achieve routing efficiencies.

- ✓ Some customers have varying or unique needs and may require pick up at different days or hours of the week, thus negating some of the anticipated efficiencies (albeit may still be easier to account for in an exclusive system).

- *Require clean fuel vehicles.* Under the current permit system, waste haulers in the City are not required by the State to operate clean alternative fuel vehicles. This is because AQMD Rule 1193 excludes private waste haulers that are not under a contract or franchise with a government agency or where a franchise does not set limits on the number of waste haulers operating in the jurisdiction. Therefore, the franchising method selected by the City would determine whether waste haulers are required by the SCAQMD to replace existing (diesel) refuse collection vehicles with clean fuel alternatives. The Bureau asserts that if the City enters into a franchise agreement that restricts the number of waste haulers that are allowed to provide service, the haulers operating under the new agreements will be required to phase in clean fuel vehicles. The responsibility to monitor and enforce the clean fuel requirements under the rule falls on SCAQMD.

  Comments:

  - ✓ While rules governing clean fuel trucks currently require a contract or franchise agreement to be effective, an Exclusive Franchise arrangement is not the only method of achieving clean trucks and the associated benefits of cleaner air to the community.

  - ✓ In fact, there may be other alternatives that are easier to implement, such as enacting a local regulation, providing financial incentives for conversion, or changing the rule. This could be required by the City under a Non-Exclusive Franchise (it should be noted that the City may be responsible for monitoring and enforcement in a scenario where the number of haulers are not limited).

  - ✓ Implementation of clean trucks as soon as possible should be a goal of the City regardless of what type of market is established for refuse collection and recycling. We believe that the City should use every leverage point possible to encourage the use of clean vehicles in every industry.

- *Maximize waste diversion.* The Bureau states that an exclusive franchise system allows for the most aggressive diversion goal to effectively meet State mandates and City Zero Waste diversion goals. The reasoning is that an exclusive system can contain mandatory and consistent diversion programs, provides more control over rates (specifically, set maximum rates), and reporting requirements which may not be feasible to administer in a non-exclusive system. Additionally, the Bureau concludes that an exclusive system will allow haulers to propose higher diversion rates through a competitive bidding process; diversion programs will be consistent and easier to monitor; and all businesses and residents will have the opportunity to recycle.

Comments:

- The City can still include sufficient parameters and requirements within non-exclusive franchise guidelines to meet or exceed State and Council/Mayor directed diversion and environmental goals (RENEW LA, Solid Waste Integrated Resources Plan, etc.). The extent and success of diversion would depend on how the franchise system and agreements are configured and enforced, with major considerations to include:

    - High standards and proper incentives for recycling, underscored by the recent implementation of AB 341 mandatory commercial recycling;
    - Adequate leverage on infrastructure (including the option for City ownership of facilities) to address pertinent policy issues such as alternative technology, food waste processing (which comprises nearly 30 percent of City waste stream) and fair labor practices;
    - Sufficient sanctions and penalties for non-compliance of diversion requirements; and,
    - Business practice transparency through adequate reporting and monitoring measures.

- *Promote safe working conditions for employees collecting or handing solid waste.* The Bureau reports that the current permit system also does not require that waste haulers abide by state law regarding employee health and safety requirements for their employees collecting and processing commercial waste. The Bureau's exclusive franchise proposal will include extended oversight and enforcement capabilities of facilities used to handle City waste, including specific provisions granting the City authority to inspect and approve all waste and recycling facilities utilized, as well as having access to records from other compliance agencies such as Cal-OSHA and the State Lead Enforcement Agency (LEA).

Comments:

✓ The Bureau's intent in this regard is not limited to an exclusive system. It can be employed in both a non-exclusive or open market structure through appropriate mechanisms in local codes and/or contractual arrangements.

✓ Workplace safety is critically important. However, it is an industry issue that transcends the political boundaries of the City of Los Angeles. Even as the second largest City in the Country, the City is too small to make a substantive difference. This must be handled on a Statewide, National and/or Industry-wide basis.

- ✓ Increasing the City's reach into regulating safety in this industry may carry potential liability. This potential liability will have a negative impact on the ability of the City to provide services.

Other Significant Issues

1. Revenue Potential

The Bureau proposes a Franchise Administrative Fee to manage the franchise and diversion programs. The Bureau's report does not ascertain whether fees from a waste hauler franchise system could be used for general City purposes.

Comments:

- ✓ The original purpose in beginning the conversation regarding franchising of refuse collection was to restructure City services in a method that allowed for a structural increase in General Fund revenue. The City Attorney has not determined that Proposition 26 is a limiting factor in the City's ability to assess a General Fund Franchise Fee. Prop 26 defines a levy, charge or exaction of any kind imposed by a local government as a tax requiring two-thirds voter approval unless specifically exempted by the legislation. A franchise fee for solid waste handling is addressed within at least one (access to public property) of seven enumerated exceptions in Prop 26.

- ✓ An administrative fee would be subject to Proposition 26. It is too early to size staffing needs and thus a fee. Staffing needs would be reviewed in connection with a report back on a final implementation plan. .

- ✓ It is clear that overlap may exist between a Franchise Fee and the current AB939 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.

- ✓ A franchise fee should be sized at a level that maximizes revenue to the City but that does not present unreasonable burden to customers. Estimates for potential franchise revenue range from $20 million to $30 million. A sensitivity analysis for fee proposals is recommended for independent review.

2. Leverage

The Sanitation proposal would grant exclusive rights to a single waste hauler in each of the eleven districts. Any one waste hauler could be selected to serve multiple districts. The City's leverage over waste haulers' performance is diminished as the number of operators in a defined area is reduced. The Bureau proposes to have back up waste haulers to support each area in the event of performance default or other non-compliance issues. We are concerned about how this would play out once operators have secured markets in their respective areas, particularly if they have control over much of the infrastructure. This raises the question on whether the City should have a greater role in the acquisition and/or control of infrastructure assets, particularly in consideration of the City's desire to implement alternative technology processing facilities.

3. Waste Stream Exemptions

The Bureau reports that the material types proposed for exemption, as follows, are necessary to align with City policies, State definitions of solid waste and case law. We reviewed these to determine the basis for exemption and implications to the City in either scenario (exempt vs. not exempt). Additionally, good policy making does not involve adoption of a policy that requires multiple significant and political exemptions to be effective.

- Construction and Demolition (C&D) Debris: The Bureau proposes exempting C&D waste for the following reasons: 1) services are non-recurring and distinct from commercial waste collection; and, 2) the City's C&D ordinance already addresses the handling and recycling of this material. In the City, all mixed C&D debris must be delivered to certified processing facilities where loads are sorted for recyclable materials that can be sent out to recyclers and ends users. The ordinance applies to waste haulers, contractors and other businesses requiring a private hauler permit. In the City, there are approximately 600 companies that have been permitted or are in the process of being permitted for C&D. In 2011, permitted haulers reported taking approximately 200,000 tons of C&D material to certified processors. The revenue potential associated with this activity is difficult to ascertain because of the variety of haulers in this category that are subject to different costs.

  Comments:

  ✓ While many other cities exempt C&D from their franchise agreements, Los Angeles County's Non-Exclusive Franchise includes C&D even though the County has an ordinance in place. This was done for the purpose of enhancing recycling requirements. The City may want to include this waste stream in a franchise if there will be a measurable effect in landfill diversion and revenue optimization, or simply on the basis that C&D haulers also use City streets and right-of-ways and, albeit to a lesser degree, contribute to wear and tear and air pollution. Additional analysis in this area is recommended through the proposed economic study.

- Hazardous, radioactive and medical/pharmaceutical waste: As defined in the California Public Resources Code section 40191, "solid waste" does not include hazardous, radioactive and medical/pharmaceutical waste. These waste streams are regulated under the Health and Safety Code and are not handled by conventional solid waste haulers. There is no comparable waste diversion benefit to including these materials in a multifamily/commercial franchise since they are already highly regulated and under strict processing and disposal requirements.

- Recyclables sold or donated by the generator: The Bureau cites California Supreme Court case Waste Management of the Desert, Inc., et al., v. Palm Springs Recycling Center, Inc as precedent for exempting recyclables sold or donated by the generator. In the decision, "waste" by definition does not include items of economic value. Therefore, recyclables which retain economic value (and incidentally contributing to landfill diversion) may be exempted from franchising.

- Incidental green waste: The Bureau recommends the exemption of green waste resulting as an incidental part of total service such as landscaping. The County provides an exemption for incidental green waste in its non-exclusive franchising program. Other cities such as San Jose and Pasadena have also chosen to allow this exemption, as incidental waste implies that the business is not directly involved in the hauling of waste and should therefore not be subject to waste hauler franchise requirements.

  Comments (on above three points):

  ✓ The basis for a franchise system is compensation to the City for the use of City infrastructure as a primary means of conducting profit-making business operations. Therefore, the characterization of these materials as other than conventional solid waste has no relevance. They still require utilization of public roads and right-of-ways.

  ✓ The waste streams could be included within a franchise but incentives offered, such as fee discounts or exemptions, where diversion has been achieved.

4. *Staffing and Operations*

The Bureau reports that six positions are immediately required to assist in program development which includes a Franchise Implementation Plan.

Comments:

✓ This is a premature request at this point in the implementation process. Sufficient justification has not been provided to support additional staff.

✓ Currently, the Citywide Recycling Trust Fund has a structural deficit ($31.3 million in annual expenses versus $21.8 million in revenue) and can not afford additional, long-term, ongoing staffing.

✓ Environmental studies, community outreach and financial studies can be performed through contractors.

✓ Resources may be needed for future enforcement of franchise requirements but the types and numbers of employees can not be determined until the franchise terns are determined. Other agencies such as the City Attorney and this Office may also need staff but are not requesting staff at this time. Staffing needs would be addressed in a report back on a final implementation plan.

5. *Customer Impact*

Businesses that provided stakeholder input indicated that an exclusive franchise would affect their ability to manage their waste hauling contracts. One of the primary goals of transitioning to a franchise system is to provide consistency in refuse rates and service offerings on a citywide basis. The Bureau will solicit information in its RFP from waste hauler applicants on existing rate structures and service levels in relation to proposed rates to help determine the impact on customers.

Comment:

✓ Consistency in refuse rates and service offerings is achievable under a Non-Exclusive system with sufficient transparency (e.g., bill of rights provision) and under continuing market competition.

Apartment owners have also expressed concern about the implications of franchising on rent stabilized properties. The Rent Stabilization Ordinance (RSO) limits annual rent increases to the Consumer Price Index with a limit of between three and eight percent, and covers approximately two-thirds (638,000 units) of the City's rental housing inventory. Landlords and tenants are concerned that a franchise system would allow haulers to increase rates exorbitantly rather than reflect true cost.

Comments:

✓ The Bureau acknowledges that the full effect of any franchise system on properties that fall under the RSO cannot be determined until a definitive rate structure has been determined. We also add that transparency in waste hauler rates is more contingent on the details of a franchise agreement rather than the type of franchise in place.

✓ Adjustments to waste hauler rates do not automatically translate to rent increases. The Rent Stabilization Ordinance authorizes "Just and Reasonable" rent increases. It provides for a review of a property's Net Operating Income (NOI) and allows for an adjustment in rent if the property is not maintaining a profit, adjusted for the CPI. If refuse collection expenses were significant enough to affect the property's NOI, then the J&R process may allow for an increase (although the review is of the overall NOI, not just one expense item).

6. *Legal Notice to Private Haulers*

The legal notice for commercial waste handling issued to private haulers on December 19, 2011 specifically identifies the City's intent to provide or authorize exclusive waste handling services. The

California Public Resources Code only makes reference to public notice requirements for exclusive franchises. Therefore, such notice would not apply in a Non-Exclusive Franchise. The Bureau's notice excludes construction and demolition waste handling. This could be problematic in any efforts to include that waste stream in an Exclusive Franchise.

7. Combining Multifamily and Commercial Waste Collection

The Bureau reports that an Exclusive Franchise with combined multifamily and commercial services provides the greatest relief to congestion of City streets, and that increased routing efficiencies combined with alternative fuel requirements will achieve the lowest air quality impacts possible.

Comment:

✓ While combining these sectors may have its benefits, it should be recognized that an Exclusive Franchise could not take effect until five years following the notice to commercial customers issued in December 2011. Based on this timeline, the earliest a system could be in place is 2017. A seven-year notice for multifamily waste collection was issued in July 2006, so a change in waste collection for that sector could take effect as early as 2013. As the Bureau's proposal is contingent on expiration of the legal public notices, it is also important to consider alternatives that can be implemented in the short term.

8. Local Codes

Franchising in the City is regulated by Charter Section 390 and Los Angeles Administrative Code, Chapter 1, Sec. 13. Under this framework, the Council must advertise its intention to grant a franchise and award the franchise to the highest responsible and responsive bidder following a competitive bidding process. Solid waste handling services in the City are regulated by Los Angeles Municipal Code, Article 6, Sec. 66, which also includes a component on franchising specific to solid waste collection and disposal activities. The ordinance allows the City to franchise both but for reasons that are not entirely clear limits refuse disposal to non-exclusive franchising (which allows for up to 12 percent of revenue collection on gross receipts). The ordinance would have to be updated and modified to include the franchising alternative, if any, that is eventually directed by Council.

Clarifying Assumptions on Commercial Waste Franchising

To put franchising in a proper context, the following clarifies common perceptions on commercial waste franchising, in an Exclusive versus Non-Exclusive context, from public testimony, discussions and in material reviewed in reference to a policy for the City of Los Angeles.

ASSUMPTION
Exclusive franchise system for commercial and multi-family will achieve maximum routing efficiencies.

Fact: Single-family homes, multifamily and commercial units are interwoven throughout the City. Due to the varied nature of residential zones, City operated single-family hauler routes will continue to overlap with private waste haulers. To maximize streamlined routes, single-family trash pickup would need to be included in a franchise to realize true efficiency. Nonetheless, efficiencies would be achieved under an exclusive system by eliminating duplicative private waste hauling within given areas.

ASSUMPTION
In a non-exclusive franchise system, it will be impossible to record customer lists and therefore reduces accountability.

Fact: The City may choose to require customer lists in the non-exclusive agreement. In the County of Los Angeles Commercial Franchise Agreement, haulers must provide a monthly customer service list on a quarterly basis.

ASSUMPTION
An exclusive franchise provides the incentive for haulers to compete for maximum diversion and green practices without the stress of competition, while a non-exclusive franchise leaves haulers competing in a "race to the bottom" for business contracts rather than environmental achievements

Fact: In any franchise system, haulers have the incentive to comply with contractual agreements, including diversion targets and clean truck requirements. Contracts can require haulers to achieve a specified diversion rate. Haulers may be subject to fines or franchise cancellation should they not meet diversion criteria. Penalties for non-compliance provide the City with leverage to achieve environmental goals.

ASSUMPTION
Exclusive franchises translate to more recycling, which will create more jobs.

Fact: A non-exclusive franchise can provide equal opportunities for recycling jobs. Additionally, in an exclusive franchise an initial loss of small-business jobs could occur. Currently operating small haulers may be forced out of the market should waste sheds be divided such that only large-scale haulers are able to provide services.

ASSUMPTION
Due to a larger amount of haulers, administrative monitoring costs to the City will be higher in a non-exclusive system.

Fact: While there will be more haulers participating in the system of a non-exclusive franchise, this does not necessarily translate to a higher monitoring costs than in an exclusive agreement. In an exclusive franchise, the City may have to remain involved in more aspects of the contract, including actively dealing with service complaints. In a non-exclusive contract, the City would not be responsible for rate setting and monitoring, while it would be in an exclusive franchise. The amount of monitoring necessary is dependent upon the City's policy decisions regarding oversight measures.

ASSUMPTION
Small haulers will be put out of business in any franchise system.

Fact: Franchises may be tailored to facilitate small-hauler competition. Franchises that do not explicitly limit the number of haulers are generally designed to provide equal opportunity for waste haulers that operate responsibly and meet the jurisdiction's objectives.

Appendix D

Stakeholder Input

Throughout our review process, we accepted meetings or heard from various industry representatives wishing to express their perspectives and concerns on the Bureau of Sanitation's Exclusive Franchise proposal. These included:

- Los Angeles Chamber of Commerce (with representatives from the entertainment/filming, hospital, apartment owner, and shipping/delivery industries).
- Southern California Apartment Owners Association
- Los Angeles County Disposal Association
- Los Angeles Alliance for a New Economy (LAANE)

To ensure we had the perspective from all sides of the issue on commercial franchising, we also reached out to major haulers and heard back from Athens Serivces and Republic Services, Inc.

Attached are comments and reports made available pursuant to some of these discussions. A summary of the LAANE report supporting an Exclusive Franchise is also attached (the full report may be obtained from the following link: http://www.dontwastela.org/wp-content/uploads/2011/01/DWLA_Report_Finalweb.pdf).

Hospitals: Specific Waste Needs Assessment

Medical Waste Hauling

Hospital waste regulation is governed by several state and federal agencies. Due to the varied waste streams flowing from the hospital environment, hauling needs are frequent and specialized. Approximately 70-80% of waste coming from a hospital consists of solid waste. Many of the waste streams may not be combined and must remain separated throughout the hauling process. Additionally, certain types of hospital waste must be disposed of under more stringent time constraints than regular solid waste. Hospitals must maintain access to a properly permitted waste hauler capable of meeting a detailed plan for medical waste disposal in a timely manner.

Waste Streams

Certain hospital waste streams may not be directly disposed of in a manner typical to the waste hauling industry. The process of separation begins at the hospital. Waste that comes into contact with the ground at a hospital must be placed in a plastic bag prior to disposal. Sharps waste (i.e. syringes) must be placed in a puncture-proof container prior to disposal. Upon disposal, separate trucks must transport waste to the proper site. Waste streams must be processed at a medical waste treatment facility and are subject to regulations specific to that type of waste.

WASTE CATEGORY	EXAMPLES	REGULATORY (ENFORCEMENT) AGENCY
Medical Waste	Biohazardous and sharps waste	CA Dept of Public Health
Pharmaceutical Waste	Expired or toxic drugs, controlled substances	CA Board of Pharmacy CA Dept of Public Health US FDA US EPA (RCRA) US DEA (Controlled Substances) CA DTSC
Hazardous Waste	Red bag/sharps waste	US EPA CA DTSC US DOT
Radioactive Waste	Heavy metals from barium treatments, chemotherapy waste	CDPH US DOE US NRC
Solid Waste	All other types of waste	Cal Recycles Los Angeles County Environmental Health

Patient Protection

The right to patient confidentiality may be compromised during the waste-hauling process. Patient privacy must be upheld when disposing of any information regarding medical records or hospital admittance. No patient information (medical records, wrist bands, etc) may leave the hospital without shredding services provided by a licensed and bonded company.

Film Industry: Specific Waste Needs Assessment

The robust industry of film and entertainment is unique in Los Angeles. As a large portion of the business executed in the City, waste hauling needs are as diverse as the industry itself. Stakeholders from the MPAA and FilmLA were contacted to determine and assess the industry's waste-hauling specifics.

Filming takes place both on studio lots as well as on location throughout the City. Both of these venues generate construction and demolition waste, hazardous waste, medical waste, food waste and solid waste. Waste needs are dependent upon aspects such as the nature of the film, volume of production and time of shooting. Additionally, film lots are often too small for regularly sized hauling vehicles. These highly variable needs change on a daily basis. The film industry has expressed concern over the ability to access a hauler who can respond and adapt quickly to changing waste needs.

The Motion Picture Association of America (MPAA) requires that waste haulers be available for twice-daily services. These pick-ups must accommodate the time schedule of studios. In addition to time constraints, the MPAA requires that all haulers be trained in production operations, specifically including how to avoid disruptions during pick-up. Haulers must also be prepared to accommodate a studio's specialty-sized bins. Due to the smaller size of film waste bins and trucks, industry haulers have expressed concern over the ability to compete in a franchise system which requires certain truck size.

One major concern of the film industry relates to the wastesheds proposed in the exclusive franchise system. On-location filming can take place in several different areas of the City in one day. In the case of an exclusively franchised system, the film business may be forced to contract with several waste haulers for one project due to varying geographic film locations.

Another industry concern relates to the speculated cost increases associated with exclusive franchising. Studio rental costs often include the price of waste hauling services therefore rental prices are directly related to waste-hauling costs. The film industry maintains that should the cost of waste-hauling increase, Los Angeles based studio pricing would be rendered less competitive.

In a non-exclusive franchise, studios would have the opportunity to choose a hauler that can adequately service their needs. Studios could potentially contract with one hauler for filming sites across the City rather than being confined to exclusively franchised haulers within particular wastesheds. By maintaining a certain level of competition between haulers, the film industry can remain competitive in pricing. Therefore there is no practical justification for granting an exemption to film industry waste streams.

Landlord and Tenant Shared Principles: Specific Waste Needs Assessment

Landlord and tenant groups came forward to express shared principles regarding waste hauling. The group requested that the Bureau of Sanitation, the City Council and other deliberative bodies consult with them in them in the policymaking process. We met with this stakeholder to assess their specific needs.

The Landlord and Tenant group requested that the City hire an independent analyst to conduct an objective analysis of the cost and price impacts of the various proposals on various stakeholders, including on landlords and tenants; and that this analysis be made available to the public. The group expressed concern that a franchise system would allow haulers to increase their rates exorbitantly rather than reflecting true cost. A provision imposing serious financial and legal consequences for haulers that overcharge was requested.

Changes in the City's waste-hauling system would directly affect both landlords and tenants, most significantly in mandates for multi-family recycling. Landlord and tenants expressed support in City recycling efforts, but voiced concern over the requirement to source-separate recyclables at rental-units. This concern stems from apprehension relating to strained relationships (and possible evictions) between landlords who require their tenants to recycle. Educational programs for recycling are strongly supported by this group.

Landlord and tenant stakeholders support replacing old hauling trucks with greener, cleaner and safer trucks. Additionally, this group supports enhanced worker safety, including enhanced enforcement on trucks and at waste-sorting facilities.

A Non-Exclusive Franchise System for Commercial Waste Management and Recycling Services in the City of Los Angeles

An Opportunity for New Near-Term General Fund Revenue

Proposed by

LOS ANGELES COUNTY DISPOSAL ASSOCIATION

5753-G Santa Ana Canyon Road
Suite 508
Anaheim Hills, CA 92807
714-693-8812

June 2012

1. Introduction

Both an exclusive and non-exclusive franchise system for the collection and recycling of commercial solid waste provide the City of Los Angeles with the opportunity to exert more control over the activities of the private hauling companies operating in the city and to generate significant new quantities of franchise fee revenue for the city's general fund. However, a non-exclusive system could be implemented much sooner, as early as the end of 2012, and begin generating franchise fee revenue for the city in 2013.

Because the private waste collection companies have the right to continue operating under their existing permits until the end of 2016, an exclusive franchise system could not be fully implemented until then, requiring the city to forgo the collection of approximately $100 million in new franchise fees in the interim.

The city's permitted haulers do not report the gross receipts received from their commercial customers separately from those received from their multifamily customers. The city's consultant, HF&H, estimated that the approximate split of private hauler gross receipts between commercial and multifamily customers to be: 65% commercial, 35% multifamily (*source:* "City of Los Angeles Solid Waste Franchise Assessment", by HF&H Consultants, January 23, 2012). These estimates have been used to calculate the approximate amount of new franchise fee revenue that the city could realize from fees imposed on privately-served commercial and multifamily accounts (Tables 1 and 2).

2. Non-Exclusive System Design

A non-exclusive franchise system for commercial waste collection and recycling could be designed and implemented as follows:

a. A non-exclusive franchise agreement could be prepared and offered to the existing permitted private refuse companies. There are numerous examples of agreements, such as the one that will become effective in the unincorporated areas of Los Angeles County on July 1, that the city can use as a model for converting to a non-exclusive franchise system.

b. The key features of a non-exclusive agreement would typically include:
   - A ten-year term, with specific renewal options
   - Requirements for the implementation of new recycling programs for all commercial and multifamily customers
   - Improved hauler performance standards
   - Enhanced reporting requirements
   - Living wage standards
   - Updated insurance requirements
   - Use of alternative-fuel collection vehicles that meet SCAQMD Rule 1193 standards
   - The payment of new franchise fees to the city and an adjustment of the amount of AB 939 fees collected and paid

Such an agreement could be developed, negotiated, and presented to the existing permitted haulers before the end of 2012. Those haulers that were willing to accept the new franchise terms could execute the agreement and begin operating under the new system as of January 1, 2013. Those haulers that could not meet the requirements of the new franchise agreement or chose not to sign it, could continue operating under their existing permits until the end of 2016.

3. Advantages for the City

A non-exclusive franchise system would offer the city all of the advantages of an exclusive system, with the added benefits of significantly lower implementation costs and the opportunity to realize new general fund revenue five years sooner. Specifically, a non-exclusive franchise system would enable the City of Los Angeles to:

- Pursue its zero waste policy by requiring the franchisees to implement new recycling programs for all of their commercial and multifamily customers
- Reduce collection vehicle emissions by requiring franchisees to upgrade their fleets with alternative-fuel vehicles
- Provide businesses and multifamily building owners with a choice of service providers
- Implement a gross receipts-based franchise fee system that could annually generate $24 - $26 million in new general fund revenue for the city

4. Franchise Fee Revenue Projections

4.1 Exclusive vs. Non-Exclusive Franchise System

If the city proceeded with implementation of a non-exclusive franchise system now (HF&H Report, Franchise Option #4), and imposed a franchise fee of 10% to 12% on franchisee gross receipts, the city could begin receiving new franchise fee revenue in the first quarter of 2013.

While the same fee structure could be implemented with an exclusive franchise system, implementation would be delayed until the end of 2016.

Over a ten-year period beginning in 2013, a 10% to 12% franchise fee for a non-exclusive franchise system could generate $270 million to $324 million in new general fund revenue for the city (assuming a modest 2.5% annual increase in commercial refuse collection rates and private-hauler gross revenues). Over the same period, an exclusive franchise system would generate $100 million to $120 million less because of the delay in the implementation date.

Projections of the annual franchise fee revenue over a ten-year period are provided in the following charts.

Chart 1: Non-Exclusive Franchise System
Estimated 10-year General Fund Revenue: $270 million to $324 million

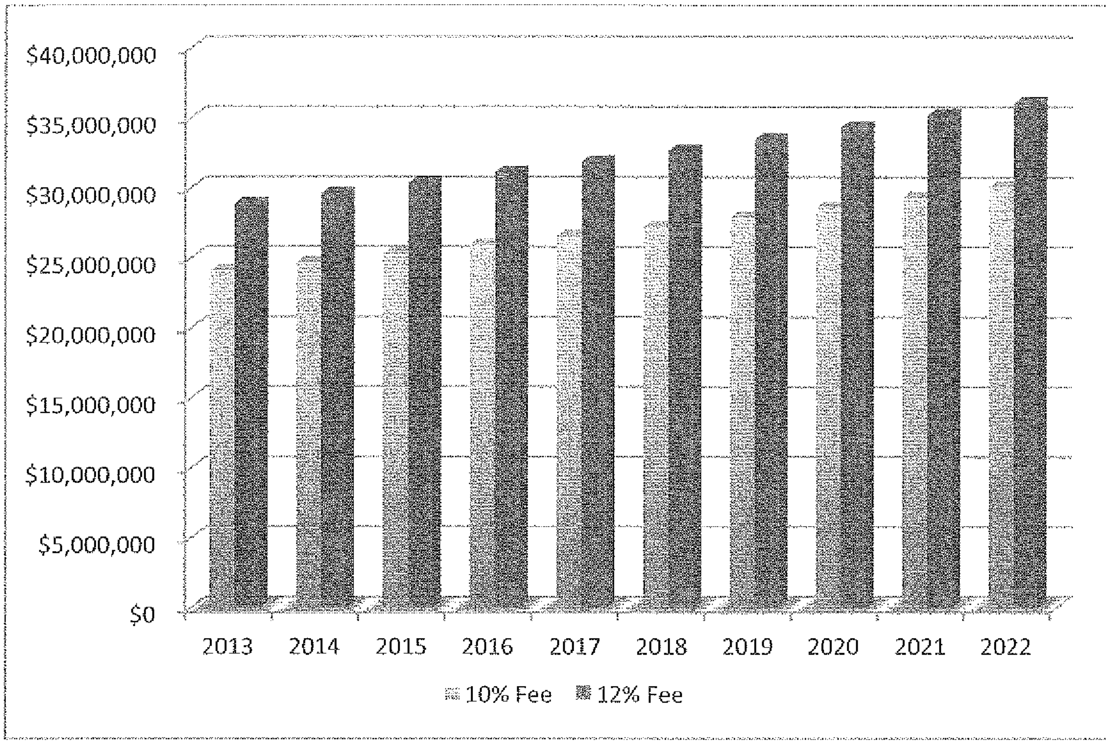
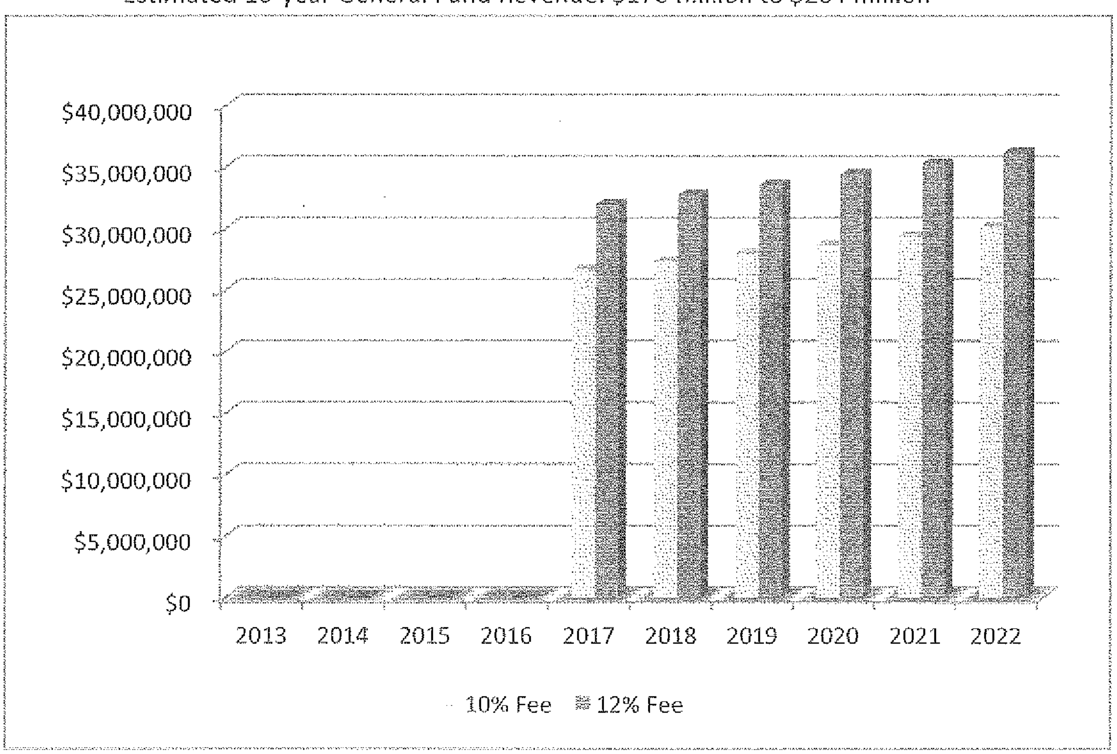


Chart 2: Exclusive Franchise System
Estimated 10-year General Fund Revenue: $170 million to $204 million



4.2 Commercial and Multifamily Franchise Fee Projections

Estimates of the annual franchise fee revenue that could be received if the city implemented a non-exclusive franchise system for multifamily and commercial customers now are shown in Tables 1 and 2.

Table 1: Estimated Franchise Fee Revenue from Privately-Served Customers (10% Franchise Fee)

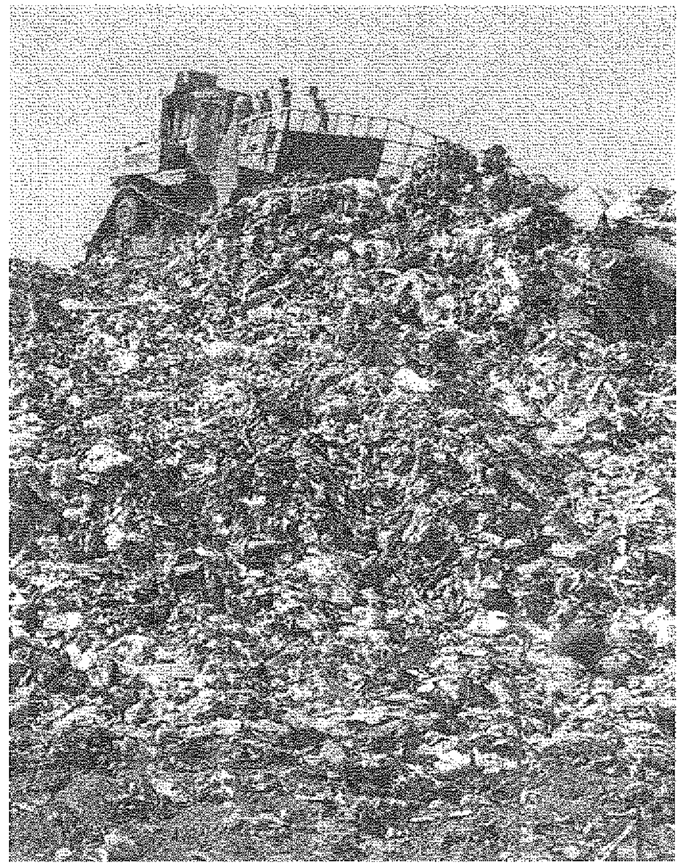
Year	Multifamily	Commercial	Combined
2013	$8,429,648	$15,655,060	$24,084,707
2014	$8,640,389	$16,046,436	$24,686,825
2015	$8,856,398	$16,447,597	$25,303,996
2016	$9,077,808	$16,858,787	$25,936,595
2017	$9,304,754	$17,280,257	$26,585,010
2018	$9,537,372	$17,712,263	$27,249,636
2019	$9,775,807	$18,155,070	$27,930,877
2020	$10,020,202	$18,608,946	$28,629,148
2021	$10,270,707	$19,074,170	$29,344,877
2022	$10,527,475	$19,551,024	$30,078,499
10-Year Total	$94,440,560	$175,389,611	$269,830,171

Table 2: Estimated Franchise Fee Revenue from Privately-Served Customers (12% Franchise Fee)

Year	Multifamily	Commercial	Combined
2013	$10,115,577	$18,786,072	$28,901,649
2014	$10,368,466	$19,255,723	$29,624,190
2015	$10,627,678	$19,737,117	$30,364,795
2016	$10,893,370	$20,230,544	$31,123,915
2017	$11,165,704	$20,736,308	$31,902,012
2018	$11,444,847	$21,254,716	$32,699,563
2019	$11,730,968	$21,786,084	$33,517,052
2020	$12,024,242	$22,330,736	$34,354,978
2021	$12,324,848	$22,889,004	$35,213,853
2022	$12,632,970	$23,461,229	$36,094,199
10-Year Total	$113,328,672	$210,467,533	$323,796,205

Executive Summary

Resolving our society's trash problem is one of the major environmental challenges of our time. In Los Angeles County, this crisis has reached urgent proportions. As one of the largest waste markets in the country, Los Angeles County generates 23 million tons of waste and recyclable materials and sends over 10 million tons of waste to landfills each year. Many of the remaining landfills in the county will reach capacity and close in the coming years, and officials project that as early as 2014, we will be making more trash than our landfills can handle.



The City of Los Angeles creates a third of the county's waste that goes to landfills and therefore has a major role to play in addressing this crisis. Recognizing this, the City has set an ambitious and worthy goal of becoming a zero waste city by 2030. However, reaching this goal will be impossible without reforming the dysfunctional and inefficient trash collection and processing system for the City's businesses and large apartment complexes.

Reforming this system is key to reaching not only the City's recycling goals but also its goal of creating new green jobs in the recycling sector. In the midst of one of the worst economic crises in modern history, the City of Los Angeles' unemployment rate stands at an alarming 14 percent. By raising standards for the waste industry, the City can create good green jobs to put people back to work, bring families out of poverty and rebuild the local economy.

Findings

Los Angeles will not meet its environmental goals without dramatically transforming its waste collection system for businesses and large apartment complexes.

» Businesses and large apartment complexes create nearly 70 percent, or 2.5 million tons, of the waste that the City sends to landfills each year.

» The current system lacks basic standards for recycling. Many Los Angeles business and large apartment tenants have no recycling services.

» Once waste is collected from businesses and large apartment complexes, the City has virtually no control over where it goes or how it is handled. If recycling sorting facilities do not adhere to high-quality standards, "recycled" materials can end up in a landfill.

» Landfills are major contributors to pollution and climate change. The City of Los Angeles has set a goal to reduce carbon dioxide emissions by 18.9 million metric tons by 2030, and nearly a quarter of this reduction can be accomplished by achieving "zero waste."

With landfills closing, the growing recycling industry has the potential to create thousands of new green jobs. Despite the growth potential, under the current system, many recycling jobs are low paying.

» For every one job at a landfill, 10 jobs could be created at a recycling sorting facility if that waste were sorted rather than buried.

» Recycling jobs are lower paying jobs: employees at recycling sorting facilities in the City of Los Angeles are paid an estimated $28,000 annually compared with the estimated $44,000 paid on average to landfill employees.

» Proper training and job standards are critical to ensuring that recycling jobs are good green jobs.

The current "open market" permit system for the commercial and multifamily sectors is dysfunctional and inefficient, hurting customers and the City. The City is missing an opportunity to increase revenue, and studies have shown that open markets can lead to unfair and inconsistent rates for customers.

» The City's permit system grants permits to 125 waste haulers to collect waste and recyclable materials from business, large apartment complex and construction customers.

» Without designated collection routes, truck routes overlap, creating serious environmental and economic costs. Multiple waste haulers are picking up trash on the same block.

» Some Los Angeles business and apartment customers are paying much higher rates than others, despite similar services.

» According to recent City audits, 10 out of 12 major haulers understated their gross receipts, and the City was owed $1.3 million. Due to the difficulty of auditing more than a hundred haulers, the City continues to be vulnerable to underpayment.

» At the same time, the City is undervaluing the worth of its waste and recycling market and could be earning more revenue by increasing recycling and improving market efficiencies.

Private waste haulers servicing Los Angeles' businesses and large apartment complexes are not subject to regional air quality standards and are some of the biggest violators of state standards.

» Government experts estimate that private waste haulers often use older diesel trucks. These trucks tend to have low gas mileage and pollute the air as they stop and start on city streets.

» Because Los Angeles is one of the most polluted air basins in the nation, the South Coast Air Quality Management District (SCAQMD) passed Rule 1193 requiring solid waste collection vehicles to transition to cleaner-burning or alternative-fuel technologies. However, because the rule does not apply to waste haulers in open markets, private waste haulers in Los Angeles are exempt.

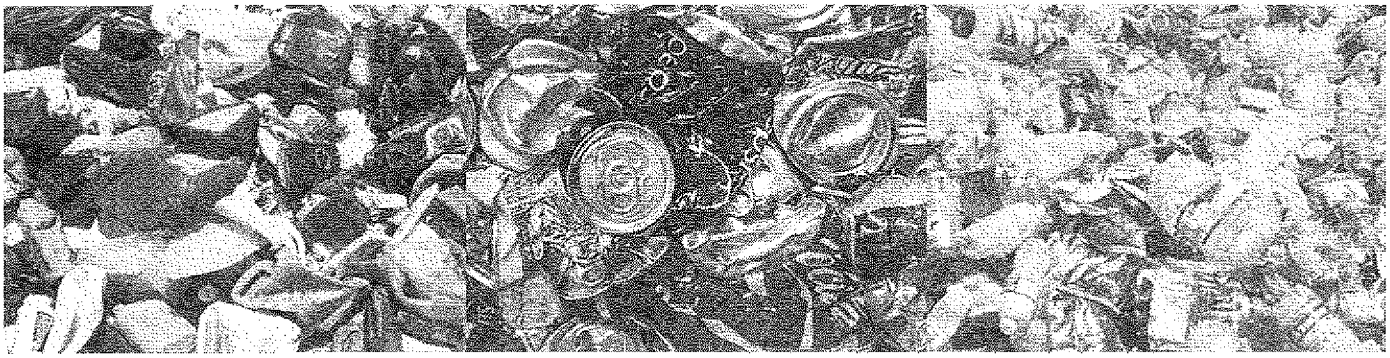
» On the state level, the California Air Resources Board implemented the Solid Waste Collection Vehicle Rule, which requires owners to retrofit trucks with diesel emission reduction technologies. Over the past two years, waste haulers that operate in Los Angeles' open market were responsible for most of California's major enforcement cases involving this rule.

Workers in the waste industry are responsible for protecting public health but face significant workplace hazards.

» Dangerous items such as needles, toxic waste and dead animals can end up in the waste stream and must be handled safely to protect the public and workers.

» Workers in the waste industry have one of the highest injury and illness rates in California, more than double the rate for private industry overall.

» Waste collectors face fatality rates similar to those of police officers and firefighters.



Policy Recommendations

For the City to successfully reach its zero waste goals to improve the environment and create green jobs, it should adopt a competitive commercial and multifamily waste franchise system. This will enable the City to negotiate enforceable contracts containing high standards for recycling services, fair and consistent rates, collection vehicles, and worker training. California courts have recognized the franchise system as an appropriate mechanism to meet the state's 50 percent recycling mandate. After the passage of this mandate in 1989, many cities adopted franchise systems in order to come into compliance. In L.A. County, as many as 55 out of 88 cities have franchise agreements for waste collection.

Through a franchise system with a competitive bidding process, the City can maximize the value of its waste system by increasing recycling, ensuring fairer rates for customers, generating greater City revenue, improving efficiencies, protecting public health and creating more good green jobs. To achieve these goals, requirements for franchisees should include:

» **Recycling for all customers:** Franchisees should be required to provide recycling options for all their customers and to improve sorting of materials via an integrated collection and processing plan.

» **Fair rates and services that encourage recycling:** Customers should be guaranteed a fair and transparent rate-setting process. The City should be actively involved in rate setting to protect customers from unfair rates and to incentivize recycling. Customers should be able to determine the level of service needed and to lower their bills by reducing waste and increasing recycling.

» **Building a food waste infrastructure:** The City should partner with franchisees to expand the City's existing pilot food waste collection program and to build the infrastructure to support increased food waste collection and composting.

» **Designated collection routes:** The City should create service areas whereby a franchisee collects materials from all customers within that service area to improve route and economic efficiencies and to ensure all customers have access to services.

» **Clean collection trucks:** Under a competitive franchise system, franchisees would automatically be subject to SCAQMD's Rule 1193 and the City would have the ability to ensure compliance with regional and state truck air quality standards.

» **Well-trained waste and recycling workers with well-maintained equipment:** Workers who collect, sort or dispose of waste and recyclable materials from the City of Los Angeles should be adequately trained and have access to proper equipment to guarantee effective recyclable recovery and the responsible and safe handling of materials.

» **Shared accountability:** Through a franchise agreement, the City can partner with companies to meet the City's zero waste goals and to implement a successful commercial recycling program.

» **Increased franchise fees and enforcement:** The City should design franchise fees to, at minimum, cover the costs for program management and compliance. Franchise agreements should include penalties for violations of the agreement.

Appendix E

Commercial Waste Franchise Profiles in Other Jurisdictions

We have researched several cities of interest in order to provide a complete analysis of waste-hauling service options for the City. By assessing precedent arrangements the City may better understand both the basics and nuances of the available alternatives to a permit system. This document highlights information that is relevant to the City of Los Angeles for the purposes of evaluating and determining best practices.

While it is recognized that there is no direct comparison to Los Angeles, relevant information can be gleaned from the similarities that exist between major cities both across the United States and within California. Municipalities were selected based on most comparable population size, subjectivity to California laws, service agreement and geographic similarities such as location. Areas of study included contract term length, associated fees, special exemptions and other applicable provisions. Differentiating factors such as regulatory environment, weather patterns effecting waste streams, population densities and special waste categories must be taken into account when evaluating alternatives for the City.

National, State and Local Service Profiles

CITY/ SERVICE AREA	COMMERCIAL SERVICES AGREEMENT	FEES	TERM LENGTH
Long Beach	Non-exclusive	-Franchise fees: 10% of gross receipts -AB 939 fee: 8% of gross receipts	10 years with 2 or 3-year extensions if hauler upgrades to clean fuel trucks
Pasadena	Non-exclusive	- Franchise fee: 23.066% of gross receipts -Divided between the General Fund ($420,000 cap) and Special Account to fund solid waste	Annual franchise renewal
LA County	Non-exclusive	-Franchise fee: 10% of gross receipts deposited into Solid Waste Management Fund	7 years with three one-year extension
San Diego	Non-exclusive	-Franchise fee: Class I haulers: $15/ton Class II haulers: $16/ton Based on quarterly reports -AB 939: $10/ton	10 years with annual renewals
Houston	Non-exclusive	Franchise fee: 4% of gross receipts	10 years
San Francisco	Permit: Single-hauler monopoly	No associated fees	Evergreen
Chicago	Open market system	$440 scavenger license fee	Permit renewal required every two years

San Jose	Exclusive	-Franchise fee: flat fee of $11 million -AB 939 fee: flat fee of $3.8 million	15 years
Phoenix	Open market system	$38.25 per ton $5.00 per vehicle	None
New York City	Open market system	Commercial Hauler Permit: $5,000 license fee $500 fee per vehicle C&D: $3,500 license fee $500 per vehicle	Permit renewal required every two years
Philadelphia	Open market system	Commercial Hauler Permit: $300 dollars	Permit renewal required annually

Discussion
The HF&F report states that while two-thirds of Los Angeles County cities have exclusive commercial solid waste franchises, the larger cities within the County tend to have other than exclusive systems. The neighboring jurisdictions of Los Angeles County (non-exclusive; population $1.1 million), Long Beach (non-exclusive; population 464,000), and Pasadena (non-exclusive, population 139,000) were examined in our report since they are the closest in size and population to the City of Los Angeles in comparison to the other cities. Generally, these cities opted for non-exclusive systems to maintain some level of free enterprise and customer choice, thus allowing existing haulers who met franchising requirements to remain in the market and providing customers significant leverage in cost and service quality.

The cities of San Diego, San Francisco and San Jose were reviewed also as cities of comparable size and also within the same state regulatory framework. Large metropolitan cities reviewed at the national level included Chicago, Houston, New York, Philadelphia and Phoenix. Of these eight cities, San Jose has an exclusive franchise system; San Francisco, Phoenix and New York have permit systems; Chicago is on the open market; and Houston and Phoenix are under non-exclusive arrangements. Each of these cities has a different perspective in terms of waste services agreements. The specifics of these arrangements provide a large scope of options available to the City regarding details of a franchise agreement. Relevant policy points warranting a more detailed explanation are described below.

The mechanics of franchise implementation varies by city. When transitioning from a permit system, a major point of contention often relates to small-hauler survival in a franchise. San Diego's non-exclusive franchise is set up as a two-tiered system which allows small haulers with less tonnage to pay lesser rates at the landfill, but equal AB 939 fees. This system was implemented to reflect market share by providing a more equitable playing field between large and small haulers. In this system, small business considerations are supported without limiting service area.

Another issue surrounding the discussion of franchising is whether or not a non-exclusive contract may include a clean-fuel vehicle provision. The City of Long Beach has leveraged non-exclusive franchise contract extensions to pursue environmental goals. Existing seven year franchise agreements may be awarded 2 or 3-year renewal options provided that all trucks move to clean fuel trucks. Most of the haulers have been compliant with this incentive and expect to receive the extension at the end of the year.

When considering a franchise fee, most cities have chosen to charge a percentage of gross receipts. San Jose's recent transition to an exclusive franchise system instituted a flat rate franchise and AB 939 fee, rather than pursuing a gross receipts fee. The rationale behind a flat rate fee speaks to the stability of revenue projections as well as less administrative requirements (eg, not as much auditing as in a self-reporting of gross receipts model). In common "pay as you throw" programs, as recycling increases the possibility of decreasing revenue to the city becomes an area of concern. San Jose has implemented a flat fee to ensure continuity in revenue while maintaining a diversion level that meets its goals.

One major concern of franchising relates to the associated cost increases passed through to customers, resulting in exorbitant rates. The non-exclusive franchise system developed by Houston has created a billing requirement in an attempt to combat this issue. Should the hauler wish to pass franchise fees to the customer, it must be listed as a separate line item in the monthly service bill. This prevents haulers from charging excessive fees for service, and provides a certain level of transparency in billing so that the customer may be fully informed of the rate break-down when negotiating a contract.

Refuse Service Profile: Long Beach

Population: 464,622

Census data estimate from California Department of Finance Population Estimates for January 1, 2012

Long Beach operates a **non-exclusive commercial franchise** system, with 15 haulers operating in the City. The Long Beach municipal code allows for two types of franchise: general waste hauling and recycling. The municipal code prohibits more than forty franchises operating in the City during any given year. Residential services are provided by the City.

Term length and associated fees: Contract length for each franchise is 10 years, with a 2 or 3-year renewal option provided that all trucks move to clean fuel systems. Franchise fees (called Refuse Hauler Business Fees) are 10% of gross receipts. Franchise fee revenue is deposited into the General Fund. Additionally, 8% of gross receipts are collected monthly in the form of an AB939 fee. These fees are deposited into the Source Reduction and Recycling Element (SRRE) program fund.

Exemptions: Recyclables

Relevant Policy: Construction projects are required to divert at least 60% of its debris. This includes city-sponsored projects. C&D projects may either self-haul their own waste or choose between the franchised haulers.

Refuse Service Profile: Pasadena
Population: 139,222
Census data estimate from California Department of Finance Population Estimates for January 1, 2012

The City of Pasadena maintains 26 **non-exclusive commercial franchise** agreements for commercial and multi-family residential (5+) waste-hauling services. Residential services are provided by the City.

Term length and associated fees: Non-exclusive waste hauling contracts are renewed on an annual basis. The franchise fee is 23.066% of gross receipts. Revenue generated is deposited into both the General Fund and a Refuse Fund. The refuse funds are used in the preparation and implementation of an integrated waste management plan and maintenance of public streets which are impacted by heavily laden vehicles.

Exemptions: Incidental waste, self-hauled waste, **hazardous wastes** and residential recycling service contracts are exempted from the franchise agreement.

Relevant policy: Entertainment and C&D waste must be hauled by one of the non-exclusively franchised waste haulers.

Refuse Service Profile: LA County

LA County has implemented a **non-exclusive** franchise system for multi-family and commercial pickup services beginning July 1, 2012. Residential waste hauling services operate under an exclusive franchise.

Term Length and associated fees: Non-exclusive franchise agreements require a 7-year contract with three 1-year extensions, plus a month-to-month extension up to six months, not to exceed a period of ten years and six months. Franchise fees are calculated using 10% of gross receipts, which is deposited into a Solid Waste Management Fund.

Noteworthy franchise terms: LA County franchised haulers must provide the County with a food diversion plan. Construction and demolition (C&D) haulers must acquire refuse bins and waste pickup services from a franchised waste hauler.

Exemptions: Recyclables, County owned-vehicles, self-hauled waste, school-districts.

Refuse Service Profile: San Diego, CA

Population: 1,321,315

Census data estimate from California Department of Finance Population Estimates for January 1, 2012

The City of San Diego collects residential refuse. Commercial and multi-family (3+) waste hauling services operate under a **two-tiered non-exclusive** franchise with Class I and Class II franchise options, developed in 2000. The franchise tiers are assigned according to the amount of tonnage a hauler processes on an annual basis. There are twenty-one franchised haulers operating in San Diego.

Term length and associated fees: San Diego has agreed to ten-year contracts with their franchised waste haulers, which are renewed annually by the City Council unless recommended otherwise. Franchise fees are assessed by tonnage, with revenue deposited into the General Fund. The tonnage assessment was created to avoid City audits of the franchises' gross revenues. Class I franchisees pay $15 per ton, while Class II franchisees pay $16 per ton. AB939 fees are $10 per ton for both classes.

Exemptions: San Diego has adopted several exemptions into their municipal code:

- Recyclables
- Containers delivered for recycling
- Green material removed by landscapers
- Self-hauled solid waste
- C&D
- Hazardous & medical waste
- By products of sewage treatment: sludge, sludge ash, grit, screenings
- Residue or non-processible waste
- Animal waste
- Municipal/government agencies using their own vehicles
- Solid waste as incidental rather than hauling service

Refuse Service Profile: Houston

Population: 2,145,146

Census data estimate from US Census Population Estimates for July 1, 2011

The City of Houston provides municipal pick up to residential units. Commercial properties are handled via a **non-exclusive** franchise agreement. Apartment complexes are not considered commercial properties. However the City requests that haulers dealing with apartment complexes and condominiums apply for a franchise to avoid mistaken decal citations, and report "0" on their quarterly earnings reports for the franchise fee. Waste collected from grease and grit traps and portable toilets is considered solid waste.

Term length and associated fees: Franchised haulers make quarterly payments of 4% of gross revenues, which is deposited into the General Fund. Franchise contracts are due to expire on December 31, 2013, upon which time existing franchises will be considered for a renewed 10-year contract.

Exemptions: Waste hauled under contract with the City (i.e. natural disaster cleanup), recycled materials

Relevant Policies: If the hauler chooses to pass the franchise fee on to the customers, it must be a separate line item in the billing statement. This is to ensure that fees are not presented as a pass-through fee from the City.

Refuse Service Profile: San Francisco

Population: 812,538

Census data estimate from California Department of Finance Population Estimates for January 1, 2012

The City of San Francisco operates under a **single-hauler permit** system. Due to a local law instituted in 1932, one company has absorbed all competing permitted haulers and now operates as a monopoly for all waste hauling services. Residential rates are set by an appointed Rate Board, while commercial rates are negotiated between the hauler and the business. In June 2012, San Francisco voters turned down a proposal to institute an RFP process to franchise the hauling process into five wastesheds.

Term length and associated fees: San Francisco maintains an evergreen contract with Recology. There are no associated franchise fees.

Exemptions: San Francisco operates an **open-market permit system for C&D hauling**. C&D haulers must only be registered within the city.

Relevant policy: The rate structure of San Francisco's exclusive hauler offers incentives to commercial properties based on recycling and composting rate. The City has declared a Zero Waste goal by 2020.

Refuse Service Profile: Philadelphia, PA

Population: 1,536,471

Census data estimate from US Census Population Estimates for July, 2011

The City of Philadelphia provides municipal waste hauling services for residences and low-volume commercial properties that are able to participate in weekly curbside pickup rather than roll-off dumpster services. Higher-volume commercial properties as well as multi-family residential units (6+) are responsible for negotiating contracts on the **open market** with permitted private haulers.

Term length and associated fees: Private haulers must update their permits annually, for a $300 fee.

Exemptions: Housing projects are not required obtain a private hauler contract. The City maintains specialty pickup vehicles to service these areas.

Relevant policy: Customers (not the hauler) are required to obtain an annual license for a dumpster in excess of one cubic yard. Temporary construction dumpsters are exempted.

Refuse Service Profile: Chicago

Population: 2,707,120

Census data estimate from US Census Population Estimates for July 1, 2011

Commercial and multi-family (5+) waste hauling services are operated through the **open market** system in Chicago. Scavenger licenses and an annual truck inspection are the only City required documentations to perform waste-hauling duties. City-provided residential pickup is currently transitioning from ward-based residential pickup into a grid pickup system to increase efficiency.

Residential recycling in Chicago operates under a hybrid system: about one-third of residences are provided with blue-cart recycling services. The blue-cart program was intended to roll out citywide but was placed on hold due to budget constraints. The remaining residential units are provided with recycling drop-off stations which are located within one mile of residences not offered blue-cart services. Of the 240,000 blue-cart serviced homes, approximately 100,000 of them are operated under a competitive non-exclusive system. The City operates the remaining properties' recycling services.

C&D: private market, permit right of way

Term length and associated fees: The only City fee associated with waste hauling is a $440 scavenger license fee.

Refuse Service Profile: New York

Population: 8,244,910

Census data estimate from California Department of Finance Population Estimates for January 1, 2012

Residential waste is managed by Department of Sanitation (DSNY); commercial waste is managed through the permit system. The Business Integrity Commission (BIC) sets maximum rates that private haulers can charge. In the state of New York, all waste haulers are required to obtain a state issued waste transporter permit. Special permits are required for specific types of waste (i.e., biohazard, sludge). Haulers deliver collected waste to privately-owned transfer facilities, where it is then repackaged in preparation for barge or long-haul train relocation.

Associated fees: New York City also requires haulers to obtain a permit from the BIC. Two-year licenses cost $5000, with additional fees for individual vehicle registration. Types of waste include: "regular waste, recyclable materials, construction and demolition debris, and medical waste".

Exemptions: In section 16-505 of the New York City administrative code, haulers may apply for construction hauling registration licenses at a lesser cost provided that C&D waste is the only type of waste hauled by that company. The cost for this license is $3,500 for a two-year term, with additional fees per vehicle.

Refuse Service Profile: San Jose

Population: 971,372

Census data estimate from California Department of Finance Population Estimates for January 1, 2012

As of July 2012, San Jose will operate under an **exclusive** franchise system for commercial waste hauling services. Previously, the City operated under a non-exclusive franchise system with multiple haulers for the commercial sector. Residential multi-family and single-family districts remain under a non-exclusive franchise agreement, divided into multi-family and single-family districts.

Term length and associated fees: The term length of the new exclusively contracted commercial hauler is 15 years. The hauler must pay an annual flat franchise fee of 11 million dollars in 2012. The fee will be adjusted in accordance with the Consumer Price Index (CPI) in the following years. In addition to a franchise operation fee, a $3.8 million AB 939 fee is collected and deposited into a refuse fund to implement recycling programs. Residential service billing is handled by the City and there is no fee associated with the non-exclusive (competitive) contracts.

Exemptions: C&D materials are not included in the exclusive franchise agreement. Additional exemptions include waste that is sold or donated, confidential, non-solid, self hauled, and hazardous wastes.

Relevant terms: Franchisee must report 75% diversion by January 1, 2013 and 80% by January 1, 2014. The City has declared a Zero Waste goal by 2022. San Jose mandates a 50% diversion rate for commercial properties.

Refuse Service Profile: Phoenix

Population: 1,469,471

Census data estimate from US Census Population Estimates for July 1, 2011

Phoenix provides municipal and private sector trash pickup for its residential units. Private sector haulers compete with the City to win the rights for hauling in certain neighborhoods. Multi-family (5+) and commercial properties are managed through a county-wide **permit system**.

Term length and associated fees: Commercial trucks must pay a fee of $38.25 per load at the two City-run facilities. There is a $5.00 fee per truck upon acquiring a waste-hauling permit.

Appendix F

Other City of Los Angeles Franchise Agreements

Each of the six currently operating franchise agreements was researched to provide a proper context for franchises within the City structure. Full profiles are included in Exhibit G. It is recognized that each franchise has unique qualities and specifications tailored to the nature of services. However, studying the construction and maintenance of franchising agreements remains pertinent to the discussion as it will shed light on the City's process for such policy making.

City of Los Angeles Franchise Table

Franchise Type	Criteria	Payment / Fees	Monitoring Agency
Taxicab **Non-exclusive**	-Nine franchises operating within the 5 shared service districts -Must display a city seal -In January 2011, the franchises began an incremental increase of fleets to 80% SULEV [super-ultra low emission vehicle] - All companies must obtain a specific stand ticket permit to operate at Los Angeles International Airport (LAX) - All vehicles must install a meter and printed receipts - Must pass yearly passenger safety inspections	- Franchise Fee: Fixed fee per taxi cab, fee applies each time a cab franchise changes hands, as well as revenue collected from charges and penalties - Total revenue approximately $3 million annually - Revenue fluctuates due to monthly variations (possibly seasonal) and audit fees - The City determines meter rates to ensure equitable ride costs - All companies must use meters to determine ride cost Franchise application deposit: $6,000	Department of Transportation Taxicab Commission monitors 9 taxicab franchises
Cable TV **Exclusive**	- 14 Cable franchise areas operating in the City served by 3 providers (Time Warner, Cox and Charter) - In accordance with federal law, the City has limited control over rate tiering, and only maintains control over the most basic tier of TV service as specified by the Federal Communications Commission (FCC)	- Franchise Fee: 6% quarterly fee imposed on gross revenue. 3% goes to General Fund, 2% is given to telecom development account for public, educational and government access (PEG) programming and funding Information Technology Agency, 1% is used to pay capital costs for (PEG) programming - Total revenue approximately $16 million annually -Franchise application deposit: $3,000	California Public Utilities Commission; pursuant to AB2987 – Digital Infrastructure and Video Competition Act (DIVCA) delegated franchising rights to the state; Los Angeles Information Technology Agency (ITA) may perform business audits
Pipelines **Exclusive and Common Carrier**	- Franchises are granted permission by the City to transport: oil, natural gas, potable water, chilled and heated water and steam - All new pipeline franchises must be reviewed by the City Council	-Franchise Fee: Based on size and length of pipe in conjunction with an established fee adjusted for change in producer price index - Total revenue to the general fund averaged at $2 million over the past ten years, except 2010-2011 where all franchise fee revenue was deposited into the General Fund ($3.8 million)	Department of Transportation & Transportation Commission

		- 50% of franchise proceeds are deposited into neighborhood improvement accounts for areas impacted by gas pipelines Franchise application deposit: $6,000	
Official Police Garage (OPG) **Exclusive**	- Police Commission and Commission Investigation Division set rates and costs to ensure equity among garage fees - Terms specify 5-year contracts with a 5-year renewal option - No OPG operator may own more than two garages - OPGs are subject to civil and vehicle codes as well as state laws pertaining to impounding and disposing of vehicles	- Franchise Fee: 7% bi-weekly fee of revenue from towing, storage and vehicle lien processing fees - Total revenue approximately $5 million annually - Revenue has decreased in recent years to due a decline in impounds	Los Angeles Police Department (LAPD); Official Police Commission and Commission Investigation Division monitor 18 service providers
Natural Gas **Exclusive**	-Exclusive franchise agreement with Southern California Gas company	- Franchise Fee: 2% of business value (gross sales of gas + value of gas not sold but only transported within the City) -Revenue ranges between $17 and $25 million annually - Volatile revenue due to the varying cost of natural gas	Department of Transportation (DOT)
Private Line **Non-exclusive**	-Companies may apply for franchises to utilize telecommunications lines for private transmissions -Franchises are non-exclusive by virtue of the fact that City reserves the right to grant the right to occupy the public right-of-way within any portion of the encroachment area	-Franchise fee: calculated based on the amount of street space occupied by conduits, at the rate of $5.00 per foot. For overhead street space occupation, fees are calculated at the rate of $1.25 per foot of wire or cable. In addition to this nominal fee, private line franchises are required to obtain a performance bond in the amount of $12,000. -Annual revenue is approximately $65,000	ITA

Discussion

In order to gain a thorough perspective regarding City franchise systems we reviewed currently operating franchise agreements. There are six franchises operating in the City. Franchises were evaluated based on information that may be pertinent when considering the institution of a waste-hauling franchise. Criteria included historical context, revenue, fees, regulatory mechanisms, service zones and environmental sustainability opportunities. While each franchise operates under specific conditions that may not be applicable to other industries, examining existing franchises will shed light on considerations specific to the City. Investigating current agreements will aid in the alignment of consistent policy.

Taxicab Franchise
Monitoring Agency: Department of Transportation, Taxicab Commission
9 franchises operating in 5 service districts

Historical Information
Taxicabs began franchising in Los Angeles in the 1920s. The taxicab commission was created in 1999. While most taxicab companies in the United States operate under a medallion system which permits operation in perpetuity, Los Angeles has chosen to limit taxicab contract length under a **non-exclusive** franchise system. In the 2000 process, nine bidders were awarded contracts. Those franchises are still in operation today. Each franchise operates as a co-op.

Service Zones
The five service zones are divided based on geographical location. Franchisees may operate in any service zone, but are required to maintain specified service levels in primary service zone or zones. Franchises responsible for more than one primary service area must maintain a larger fleet of vehicles.

Criteria and Best Practices
Currently there are nine taxicab franchises operating in the City, under five service areas. While any taxicab is able to drive, pick-up and transport passengers in any area of Los Angeles, the service areas define the boundaries in which each franchise may advertise services. In addition, each taxicab franchise is granted between one and three primary service areas where that company must maintain a certain level of service response in order to maintain the privilege of operating through all service districts.

Highlights of City Regulatory Mechanisms:
- All cabs must display a city seal;
- All taxicab franchises must pass yearly passenger safety and vehicle inspections;
- Franchises must implement a dispatch record keeping system capable of determining; who is driving a particular taxicab at any time;
- Preventative maintenance must be performed every 5,000 miles or sooner;
- Monthly service reports must be submitted to the City with respect to number of trips; per zone, sub-zone, and total city, separated categorically according to response time. Additional reports must be submitted including service call data; and
- Underperforming franchises are subject to fines, loss of LAX transportation privileges, or revocation of franchise contract.

Taxicab Inspection Process
- There are approximately nine inspection days per month carried out by Department of Transportation employee Transportation Investigators. There are about 2,365 cabs registered with the city;
- Depending on the size of the taxicab franchise, more inspections are assigned to companies operating more cabs. Non-safety related inspection failures may be fixed on the same day to pass inspection;
- Safety related violations usually require a re-check and are considered violations.

Franchise Fee System and User Fees
The City charges a fixed fee per taxi cab in each franchise. Currently the fee is about $105 monthly per cab. This number is reviewed and adjusted based on current cab fare rates. A fee is incurred every time a franchise changes hands. Franchise applications require a deposit of $6,000. Trips originating at LAX collect a surcharge fee (currently at $4.00 per trip) and are deposited into a LAWA account. Franchise terms are of five year length with five 1-year renewal options.

Charges and penalties include safety and maintenance considerations such as well as ordinance violation fines. Any fine paid by a taxicab franchise is deposited into a special account for enforcement costs, such as bandit taxicab enforcement.

Revenue
Total revenue to the General Fund in FY 2010-2011 amounted to 3.1 million dollars.

Environmental Concerns
Pursuant to Board Order No. 62 set forth by the Board of Taxicab Commissioners, taxicab franchises are required to increase the number of green vehicles operation. As of January 2011, the nine existing taxicab franchises began incrementally increasing their fleets to super-ultra low emissions vehicles (SULEV), to reach a target of 80% green vehicles by 2015.

Natural Gas Franchise
Monitoring Agency: DOT holds the authority to monitor and audit natural gas franchises.

Historical Information
Southern California Gas Company has maintained a 20-year contract in an exclusive franchise for natural gas.

Franchise Fee System and User Fees
The City charges a franchise fee of 2% overall business value. This includes gross sales of gas plus the value of gas not sold but only transported within the City (tariff).

Environmental Concerns
The California Fire Marshall is responsible for the safety of natural gas emergencies. Safety monitoring for natural gas is subject to state regulation. The California Fire Marshal is responsible for accidents related to natural gas explosions.

Revenue
The city brings in approximately $17-25 million annually through the natural gas franchise. The natural gas market prices are prone to fluctuations and therefore income to the city is subject to these volatilities. One hundred percent of this money is deposited into the General Fund.

Police Garage Franchise (OPG)
18 Police Garage Operators operating in 18 separate districts

Monitoring Agency: LAPD, Board of Police Commissioners and its Commission Investigation Division (CID)

Historical Information
Official Police Garage franchises tow more than 165,000 vehicles per year. About 40% of these vehicles are sold as junk or through the DMV lien process. These profits are included in the franchise fee given to the City's General Fund. There is a 10% parking occupancy fee that is collected and deposited into the Parking Fund.

Official Police Garages were created in Los Angeles in 1938. The City turned to the private sector at this time to handle towing and vehicle processing matters.

Service Zones
LAPD originally assigned one OPG per geographic area for vehicle impound processing. As Los Angeles grew, and the number of geographic areas increased, geographic areas were reassigned and new OPGs were installed. As bureau numbers increased it became evident that if the OPG service districts were parceled any further, it would no longer be cost effective to open and operate within increasingly small areas. Currently, when new bureaus are opened, existing (incumbent) OPG operators split the service area to cover their respective portion of the new area.

The current franchising system is governed by the California Vehicle Code. In 1990, litigation against the City's operation of the OPG contracts spurred an RFP process which created the system that exists today.

Criteria and Best Practices
- One OPG operator may only own two garages;
- Employers must adhere to the City Living Wage requirement; and
- Primary garages must exist in the service area in which they serve.

Highlights of Regulatory Mechanisms:
- Must remit vehicle release fees and vehicle forfeiture proceeds and gross receipts on the 15th day and last day of each calendar month (bi-monthly, electronic franchise payments). This fee was previously collected every quarter, which caused April-June fees to be collected in July and subsequently saved for the following fiscal year. The new two-week collection process does not increase overall revenue but increases the city's cash flow for the fiscal year. The 10% parking tax is paid every 30 days;
- Vehicle release fees are $115;
  - Both release fees and parking occupancy tax are city monies collected by the OPG;
- Late (15 days or more) remittances are 25% of release and forfeiture fees;
- 7% of gross receipts are due to the general fund from each Official Police Garage. This includes the sale of lien vehicles and towing/storage of vehicles; and

- 5-year operating contract subject to the Board of Police Commissioners review of service agreement, with 5-year renewal option.

Franchise Fee System and User Fees
Franchise income received from Official Police Garages is equal to 7% of total gross receipts.

Revenue
Total revenue to the General Fund is approximately $5 million annually. Revenue has decreased in recent years due to a decline in impounds.

Cable Television Franchise
5 CPUC regulated franchises operating in 14 service districts
AT&T, Cox, Charter, Time Warner and Verizon

Monitoring Agencies
State: California Public Utilities Commission City: ITA Los Angeles

Historical Information
In accordance with California Assembly Bill 2987 (DIVCA), City Ordinance 178108 states that the California Public Utilities Commission carries the right to grant state cable television franchises as of 2007. Cable companies must comply with FCC and CPUC standards.

Prior to DIVCA, cable franchises in Los Angeles provided Public, Educational and Government Access Programming (PEG). Under DIVCA, 1% of gross receipts must be paid to a special fund in the City to cover the costs of PEG.

Franchise Fee System and User Fees
Franchise fees are collected on a quarterly basis.

5% franchise fee + 1% PEG/Capital Cost programming fee = 6% total franchise fees

Franchise fees of 6% are allocated to three areas. 3% of gross revenue is deposited into the general fund. 2% of the overall franchise costs are deposited into the telecommunications development account (TDA), which is to be used for "capital costs". The additional, state mandated 1% PEG/Capital cost fee is also deposited into the TDA account for public, educational and government access programming (PEG). Currently the TDA account holds approximately 20 million dollars reserved for capital costs.

Revenue:
Total revenue to the General Fund is approximately $16 million annually.

Pipeline Franchise
60 Franchise agreements

Monitoring Agency: Department of Transportation

Criteria and Best Practices

- Pipeline design, manufacturing, construction and maintenance is to be performed in accordance with the Pipeline Code, Pipeline Safety Act, California Public Utilities Code (CPUC) regulations for pipelines and the Federal Office of Pipeline Safety
- Franchise grantees must provide reports in regards to pressure test results, accident reports including rupture, spill, explosion or fire, as well as maps and diagrams indicating the location of pipelines
- Exemption: Communications lines are exempted because they are under the cable franchise jurisdiction which is monitored by the state.

Franchise Fee System and User Fees
There are two fee systems for pipeline franchises: one calculation for exclusively franchised pipelines and another calculated for common carrier pipelines. Common carriers have the ability to lease out their pipelines to other companies when they are not in use. The majority of franchises in the City are classified as common carriers.

Franchise fees are due annually. The City assesses franchise fees based on size and length of pipe in conjunction with an established fee adjusted for change in producer price index. Franchise fees are levied for the use of street space occupied by facilities, including pipeline and overhead communication lines. Franchise fees for common carrier pipelines are calculated using base fees determined by the CPUC. Exclusively franchised pipelines are charged yearly rates of $1.40 per cubic foot are price adjusted according to the Los Angeles-Riverside-Orange County Consumers Price Index for All Urban Consumers (LACPI).

If the grantee does not make franchise payments in a timely manner (within 30 days of their due date) or does not properly assess pipeline footage calculations, a 10% penalty fee is levied.
Franchise terms are 10 years in length. Terms have been shortened from 20 years to 10 years to provide the city with increased flexibility for contract renegotiations.

Revenue
50% of franchise fees are deposited into the General Fund, and 50% are deposited into a special fund reserved for street repairs. Half of the special fund fees (25% of the total) are distributed evenly among council districts to pay for street repairs. The other half (25% of the total) are distributed proportionally among districts according to pipeline usage rates.

Revenue to the General Fund averaged at 2 million over the past ten years, except 2010-2011 where all franchise fee revenue was deposited into the General Fund ($3.8 million).

Private Line Franchise

Monitoring Agency: ITA

Historical Information
Private line franchises are issued to corporations operating telecommunications lines in multiple locations within the City limits. Examples include Kaiser Permanente and Hilton Hotels. These franchises garner a very small amount of funds to the City. Sixty percent of revenue is deposited to the General Fund and forty percent to the Telecommunications Development Fund (TDA).

Criteria and Best Practices
Franchise renewals must be filed at least 12 months prior to the termination of the previous contract expiration date.

Franchise Fee System and User Fees
Franchise contract lengths are valid for ten-years. Franchise fees are collected annually. Franchisees have the option of paying a lump sum fee (ten years of annual fees) when a franchise ordinance is issued. Franchise fees are calculated based on the amount of street space occupied by conduits, at the rate of $5.00 per foot. For overhead street space occupation, fees are calculated at the rate of $1.25 per foot of wire or cable. In addition to this fee, private line franchises are required to obtain a performance bond in the amount of $12,000.

Appendix G

Economic Analysis Scope of Work

1. Fiscal/Economic Impact

   - Structure and revenue potential of a franchise fee and administrative fee, and modified rate structure under the existing AB 939 Private Hauler Ordinance.

   - Sensitivity analysis of fees/rates on:

     - ⇨ Commercial property owners and tenants
     - ⇨ Multifamily property owners and residents/tenants – Distinction between RSO and non-rent controlled (RSO properties can only do annually permitted CPI rent increases – cannot directly pass on increased operating costs).
     - ⇨ Public facilities

   - Applicability of waste stream exemptions

Existing Mandates that Leverage Environmental Goals

It should be noted that franchising would complement regulatory requirements that have expanded over the years for environmental protections attributed to solid waste handling. As such, franchising would not be the sole factor in moving the City toward zero waste objectives.

- AB 939 – This bill establishes minimum diversion rates for jurisdictions with substantial penalties for non-compliance. AB 939 mandated local jurisdictions to meet solid waste diversion goals of 25 percent by 1995 and 50 percent by 2000. To help in the increase of diversion rates, each jurisdiction was required to create an Integrated Waste Management Plan that looked at recycling programs, purchasing of recycled products and waste minimization. Public Resources Code §41901 authorizes jurisdictions to impose fees to recover costs for these purposes, which Sanitation currently does under the Private Hauler Ordinance.

- AB 341 - This bill requires mandatory commercial recycling in California beginning July 1, 2012. The State's Department of Resources Recycling is required to increase the diversion of solid waste from the current mandate of 50 percent to 70 percent by 2020. Businesses or public entities generating more than four cubic yards of solid waste per week, as well as multifamily buildings of five units or more, must recycle. Such businesses are required to either separate recyclable materials from solid waste and arrange for their collection, or to contract with a recycling service that provides mixed waste processing services. The bill also requires local governments to implement a commercial recycling program for their own waste.

- AQMD Rule 1193 – This rule requires solid waste collection fleet operators to acquire alternative-fuel refuse collection vehicles in the South Coast Air Quality Management District to reduce air toxic and criteria pollutant emissions. The rule applies to government agencies operating 15 or more refuse fleet trucks. The rule also applies to private operators that provide solid waste collection for government but excludes those for which a contract or franchise agreement is not required. That is, vehicles providing strictly private services are exempt.

- California Air Resources Board Solid Waste Collection Vehicle Rule (SWCV) – The SCWV Rule was passed to reduce the harmful health impacts of exhaust from diesel-fueled waste collection trucks. The rule requires truck owners to use ARB verified control technology that best reduces emissions. The mandate's implementation schedule required waste collection companies and government agencies that operate their own waste collection trucks to phase in cleaner trucks beginning in 2004 through 2010.

- AB 32 – This bill, also called the California Global Warming Solutions Act of 2006, requires the California Air Resources Board (ARB) to mandate and monitor emissions limits throughout the State. California greenhouse gas emissions must achieve 1990 levels by the year 2020. A mandatory recycling requirement is included in the scoping plan for this bill. California ARB has partnered with the California Integrated Waste Management Board (now Calrecycles) to produce specific measures to move toward zero waste, high recycling, composting and landfill methane control. Calrecycles has implemented AB 341 in response to this bill.

AS AMENDED**
ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California
AND REFERRED TO THE MAYOR
FEB 13 2012

Executive Officer

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION
BOARD REPORT NO. 1
FEBRUARY 13, 2012

CD: ALL

AUTHORITY TO IMPLEMENT AN EXCLUSIVE FRANCHISE WASTE HAULING SYSTEM IN THE CITY OF LOS ANGELES

RECOMMENDATIONS

Authorize the Bureau of Sanitation (Sanitation) to:

1. Approve and forward this report with transmittals to the Mayor and City Council with the recommendation that Sanitation be authorized to draft a Request for Proposals (RFP) to enter into exclusive (one hauler per franchise area) franchise agreements for the collection of solid waste from commercial, industrial, institutional, and multifamily (privately serviced) properties.
2. Combine the commercial and multifamily franchising processes to generate a higher diversion rate, promote more efficient routing, and reduce truck traffic, vehicle emissions, and noise.
3. ** Set the term of the franchise agreement to ten years with two five (5) year renewal options **with mandatory mid-term assessment.**
4. Designate eleven (11) franchise collection areas as subdivisions of the City's current six (6) wastesheds.
5. Exempt medical waste, hazardous waste, construction and demolition waste, radioactive waste, pharmaceutical waste, recyclables that have been sold or donated by the generator, green waste removed from a site as incidental to a landscaping business from the Franchise system, and other specialty waste as designated by Sanitation.
6. Retain the current AB939 Fee and establish an administrative/AB939 fee to provide sufficient funds to implement and manage the franchise system and diversion programs.
7. Request the City Attorney evaluate the ability to establish a solid waste hauler franchise fee(s) for general City purpose.
8. Direct Sanitation to begin the California Environmental Quality Act (CEQA) environmental review process.
9. Request the City Attorney to prepare a final draft ordinance for an exclusive waste hauler franchise for commercial and multifamily waste hauling within the City of Los Angeles.
10. Approve the immediate unfreeze from managed hiring of six positions in Sanitation for development of the franchise system.
11. Direct Sanitation to return with a Franchise Implementation Plan including timeline, staffing requirements, and funding needs for the franchise system; proposed franchise area boundaries; and a Franchise Transition Plan.
12. ** **Direct Sanitation to further examine the implications of the proposed franchise system on the filming industry and to develop recommendations specific to that industry.**
13. ** **Direct Sanitation to develop and make further recommendations on a regular community input process.**

FISCAL IMPACT STATEMENT

There is no General Fund impact from the development of this program. Staff requests are budgeted existing positions, fully funded by the Citywide Recycling Trust Fund (CRTF).

TRANSMITTALS

1. 5-year Notification Letter to Permitted Private Waste Haulers.
2. CF#10-1797 - motion by Huizar/Koretz directing Sanitation to 1) assess the City of San Jose's solid waste system redesign, and 2) explore whether including the commercial sector in the proposed multifamily franchise would help the City reach its Zero Waste, environmental and financial goals more expediently and efficiently.
3. Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement between the City of San Jose And Allied Waste Services of North America, LLC, DBS Allied Waste Services of Santa Clara County.
4. HF&H Consultants Final Report.
5. Stakeholder meeting attendees.
6. Stakeholder comments.
7. Proposed Mandatory Commercial Recycling Regulations Frequently Asked Questions, prepared by CalRecycle in January 2012.
8. Bureau of Sanitation Franchise Cities Survey.

DISCUSSION

The City of Los Angeles (City) has made considerable strides over the last decade to become a Zero Waste City. In 1994, the City adopted an integrated solid waste management plan to reach a 70 percent diversion goal by the year 2020. Mayor Antonio Villaraigosa raised the bar higher, challenging Sanitation to divert 70 percent of the City's waste by 2013. In addition, the Mayor and City Council directed Sanitation to reach a Zero Waste goal of 90 percent diversion by 2025. Major diversion programs have been implemented, including curbside automated recycling and green waste diversion programs for Sanitation serviced single and multifamily customers. This single program caused the overall City landfill disposal to fall by 6,000 tons per day, or over 1.5 million tons per year. Under the direction of Mayor Villaraigosa, recycling services were offered to all multifamily properties. Sanitation also commenced the Solid Waste Integrated Resources Plan (SWIRP) process, which included extensive stakeholder outreach, to provide a platform to launch the programs necessary to reach Zero Waste.

Waste collection and disposal in the City is handled by public and private waste haulers. Public collection of refuse, recycling, and green waste is primarily provided by Sanitation to single family properties and multifamily properties with four (4) units or less. This is due to the moratorium approved by the City Council in 1991, which prevents most apartment buildings of five (5) or more units from participating in the City's automated waste collection program.

Since this moratorium was adopted, multifamily dwellings of five (5) or more units have been primarily serviced by private waste haulers, although some larger buildings (with five (5) units or more), that had continually received City service before the moratorium, were "grandfathered" in to public collection and will continue to receive curbside services from Sanitation.

Under the current waste hauler permit system, businesses are allowed to select and negotiate waste disposal and/or recycling contracts with any of the City's permitted private waste haulers. There are now 740 permitted private waste haulers providing some kind of waste hauling (as of February 1, 2012). Almost 81% (600) of these permitted haulers are construction related contractors who have taken out permits to haul construction and demolition debris, under the new City ordinance described below. Of the remaining 140 permitted haulers, only 68 collect enough waste to report receipts (required of those hauling more than 1,000 tons per year), the ten (10) top grossing waste haulers control 94% of the business, and the top four (4) control 85%. An estimated 100,000 service accounts exist in the City, including sites such as large office buildings, malls, and hotels, while in contrast the City of San Jose has 8,000 service accounts in its new exclusive commercial franchise.

The City has modified how commercial waste hauling is conducted over the years largely in response to both State and local diversion requirements. Assembly Bill 939 (AB939) established minimum diversion rates for jurisdictions, with substantial penalties for non-compliance. In 2002, to help the City address the requirements of AB939, and to fund large scale new recycling programs, the City Council approved an open-market permit system for the collection and management of waste and recovered materials from large multifamily, commercial, industrial, and institutional customers. The permit system is managed by Sanitation's Solid Resources Citywide Recycling Division (SRCRD). Prior to the current permit system, private waste haulers operated in the City without any regulatory oversight. As part of the permit process, private waste haulers are required to submit an annual report and application and pay a 10% AB939 Compliance fee based on gross receipts to operate in the City. In 2010 the City Council approved modifying the waste hauler permit system to require waste haulers deliver all construction and demolition (C&D) debris to a City certified processor. Other than the requirement to divert all C&D debris, there is no other diversion or operational requirements placed on the permitted waste haulers.

Sanitation has implemented a number of significant new waste diversion programs over the past nine years. The multifamily residential recycling program has expanded blue bin recycling to 430,000 households since citywide expansion in 2007. The partnership to expand recycling at LAUSD has resulted in 658 schools being provided weekly service, and over 120,000 students educated on waste reduction and recycling. Over 38,000 tons of food waste each year through Sanitations Restaurant Food Waste Recycling Program. Also, all construction and demolition material must be recycled, which is estimated to reduce City disposal by over 100,000 tons per year.

Although the existing waste hauler permit system and AB939 Compliance Fee has been an effective tool used by Sanitation in establishing significant recycling programs, it limits the City's ability to address many of the current challenges it faces. These challenges include compliance with new State mandates, City diversion goals, and the environmental and health impacts of waste hauling.

AB 341, signed into law in October 2011, creates green jobs by mandating recycling to every multifamily dwelling over five units and businesses which dispose of a certain level of trash each week. Upon adoption, the regulations for this measure will take effect in July 2012. CalRecycle is also charged with adopting a plan to bring the entire state to 75% waste diversion by 2020. The City has adopted the RENEW plan, which establishes a Zero Waste goal of 90% diversion by 2025, and the Mayor established a goal of 70% diversion by 2013. Due to the existing permit structure, waste haulers are not required by the State to operate clean alternative fuel vehicles, which negatively impacts local air quality. Multiple haulers operating in a given area translate to more refuse trucks on the road, traffic impacts, and more localized emissions. The current permit system also does not require waste haulers abide by state law regarding employee health and safety requirements for their employees collecting and processing commercial waste.

To address the limitations of the current waste hauler permit system, Sanitation recommends establishing exclusive franchise agreements for the collection of waste from both multifamily and commercial properties. An exclusive franchise system will allow the City to: minimize the impact of private refuse collection vehicles by maximizing routing efficiencies; require clean fuel vehicles; maximize waste diversion; and promote safe working conditions for employees collecting or handling solid waste. Sanitation recommends that construction and demolition waste, medical waste, hazardous waste, radioactive waste, pharmaceutical waste, recyclables that have value to the generator which have been sold or donated, and green waste removed from a site as incidental to a landscaping business, be exempted from the waste franchise. These exemptions are necessary to align with City policies, State definitions of solid waste, and case law. Sanitation further recommends that multiple franchise areas be established within the City. The exclusive franchise system may contain elements such as maximum disposal amounts per zone, aggressive diversion programs, including outreach and education, clean fuel requirements, and worker health and safety requirements, to be administered by Sanitation.

SRCRD, within Sanitation, will be responsible for the development of the Solid Waste Franchise Request for Proposals (RFP), coordination with the City Attorney's office on associated ordinances, franchise/contract negotiation and development, and franchise implementation and compliance. The implementation of a new franchise system in the City of Los Angeles is a significant administrative undertaking and will require the creation of a Franchise Section within SRCRD.

It is recommended that a Franchise Administrative Fee be developed and approved as part of the proposed exclusive franchise system. Sanitation will prepare a Franchise Implementation Plan detailing the necessary staffing levels to complete the stages of development. The Franchise Administrative Fee will provide ongoing funding for the resources needed to implement and manage this program. Until program adoption takes place, Sanitation does require that six existing positions be unfrozen within SRCRD to assist in program development. New positions will be requested through the development of the Franchise Implementation Plan.

Background

The City has the right and responsibility to manage all solid waste collection within its boundaries. As set forth in California Public Resources Code (PRC) Section 49300, et seq, cities may contract for the collection and disposal of waste. Waste hauling in the City is performed by both private waste haulers and Sanitation. The City's policy on waste collection and hauling is addressed in the Los Angeles Municipal Code, commencing at Section 66.00. Section 66.00.1(a)(10), states the City's policy of providing City services to collect household refuse, but not to provide such services for commercial garbage, refuse, food plant waste, or building material rubbish. The City has and may, at its discretion, collect solid waste from multifamily properties with five or more units. For the purposes of this report, commercial garbage, commercial refuse, and food plant waste shall mean solid waste collected from commercial premises. As used herein, "Commercial premises" would include, but not be limited to, all industrial, retail, wholesale, services, restaurant, hotel, motel, institutional and other premises, which are subject to the existing City of Los Angeles permit system regulating the collection of solid waste, whether or not such premises are used for profit or non-profit purposes. Commercial premises does not include those single family and multi-unit residential facilities and governmental institutions for which solid waste hauling is provided directly by Sanitation.

Sanitation operates one of the largest municipal solid resources collection systems in the nation. All 540,000 single family homes, and 220,000 small multifamily households are provided weekly recycling, green waste, and waste disposal services by Sanitation. Sanitation will remain the designated provider for bulky item service collection in the residential sector of the City (single family and multifamily dwellings). Special collection services include on-call bulky item collection for all City residents, bulky brush, white goods (appliances), electronics, and move-in/move-out services. Sanitation has the largest municipal clean fuel collection fleet in the United States, with six collection districts located throughout the City, and operates an extensive customer service center which receives over 60,000 incoming calls each month.

Sanitation currently administers the private sector permit system for the collection and management of waste and recovered materials from large multifamily, commercial, industrial, and institutional customers within our borders. This permit system was established in September 2002. All private waste haulers operating in the City are required to obtain an annual permit, and if they collect more than 1,000 tons of waste annually, pay quarterly AB939 Compliance Fees. Funds collected through the fee system are to be used only for administration of the permit systems and for recycling programs that benefit the large multifamily, commercial, industrial, and institutional customers of private waste haulers. Through an auditing program Sanitation conducts on-site evaluations of the AB939 fees collected and the City aggressively pursues those that do not comply through an enforcement program. Auditing and enforcement have resulted in judgments against past due haulers, revocation of permits, and the identification and recovery of hundreds of thousands of dollars in AB939 fees. Annual AB939 revenue in 2010 was $21.3 million.

These AB939 Compliance fees have funded the establishment of many major recycling programs for commercial and multifamily participants. These programs include the multifamily recycling program, with over 430,000 units now participating; food waste collection and recycling at over 1,060 restaurants; blue bin recycling at 658 LAUSD schools; the adoption of the Citywide Construction and Demolition recycling program; a technical assistance and waste assessment program that has reached over 800 businesses; and a rebate program that creates an incentive for private waste haulers to recycle. Sanitation also provides all non-proprietary City Departments with recycling services as well as recycling education.

Under the current permit system, businesses are allowed to select and negotiate a collection and disposal and/or recycling contract with any of the currently permitted private waste haulers operating within the City. Based on self reporting, businesses within the City have demonstrated a relatively high recycling rate with voluntary programs. Many large businesses within the City recycle a wide variety of material, both to help the environment and to save money on their collection and disposal fees. These voluntary efforts have assisted greatly in the City achieving a high diversion rate. City staff have been working with businesses to provide voluntary waste assessments and technical assistance to help begin and expand recycling programs for commercial and industrial customers, including those in the City's large industrial sector.

Prior to the adoption of the Construction and Demolition (C&D) Debris Recycling Ordinance, approved by City Council in December 2010, there were approximately 140 permitted waste haulers operating in the City. Of the 140 permitted waste haulers, Sanitation estimates that approximately 44 waste haulers collected non-C&D waste from commercial and multifamily properties. However, by removing the permit exemption for contractors that self haul C&D debris, an additional 600 permitted waste haulers have been added (as of February 1, 2012) that collect just C&D waste. The additional permitted haulers are contractors that typically haul smaller amounts, less than 1,000 tons per year, of C&D waste in their own trucks. Collection and recycling of C&D debris is not included in the proposed franchise system recommendations and will continue to be administered through the existing permit process.

As set forth in California Public Resource Code (PRC), Section 49520 provides some protection to certain private haulers to continue providing solid waste handling services for a period of five years following mailing of a notice. PRC Section 49520 states that "If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been lawfully provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract."

On July 7, 2006, the City issued notice to all permitted waste haulers of the City's intent with respect to the implementation of a franchise system for waste handling services provided to multifamily residential properties. Although the PRC states that a waste hauler may continue to provide service for up to five (5) years after the notice, this City notice advised haulers the City intended to implement a solid waste handling franchise in seven (7) years, or as early as 2013.

On December 6, 2011, the City Council directed Sanitation to send a five-year notice to permitted private waste haulers (CF #11-1006)(Transmittal #1), regarding solid waste handling services for Commercial premises (other than certain construction and demolition services). This notice reserves the City's rights with respect to the implementation of a franchise system in the City, but does not bind the City to any specific action.

In accordance with the five (5) year notice for Commercial premises described above, Sanitation is not recommending that the proposed franchise cover the handling of construction and demolition debris, as defined in Los Angeles Municipal Code Sections 66.32 et seq. Such non-recurring services are distinct from commercial waste collection. On December 17, 2010, the City Council approved an ordinance, Council File number 09-3029, that effectively addresses the collection and recycling of construction and demolition debris.

Waste Hauling System Evaluations

On November 16, 2010, a motion (Huizar/Koretz CF#10-1797) was introduced in City Council which directed Sanitation to 1) assess the City of San Jose's solid waste system redesign, and 2) explore whether including the commercial sector in the proposed multifamily franchise would help the City reach its Zero Waste, environmental and financial goals more expediently and efficiently (Transmittal #2). The City of San Jose is transitioning from the current non-exclusive franchise system, to an exclusive franchise system for its commercial business sector.

In response to this motion, Sanitation analyzed various franchise options available for commercial and multifamily waste collection. Sanitation contracted with a consultant specializing in waste collection franchising, and began a stakeholder process. On December 29, 2010 Sanitation contracted with Parsons Water and Infrastructure Inc., with HF&H Consultants as a sub-contractor, to prepare a report addressing the questions raised by the City Council and analyze potential franchise systems. In January 2012, HF&H Consultants completed its final report to Sanitation (Transmittal #4).

<u>Franchise Definitions</u>

The terms "exclusive franchise" and "non-exclusive franchise," are defined and used differently in this report, which is focused on policy choices, than they are in the California Public Resources Code (PRC), which is concerned with the applicable statutory notice. In the PRC, an "exclusive franchise" is one that is limited in some fashion, and may include one or more haulers operating in a given area of the City. This definition is useful in adoption, and understanding the affect of, the statutory notice. It is not helpful in assessing the advantages and disadvantages of the principal policy alternatives here.

For the purpose of the policy discussion and recommendations in this report, an "exclusive franchise" is one in which only one waste hauler has the right to provide solid waste handling services in a given area of the City, and a "non-exclusive franchise" is one in which more than one waste hauler has the right to provide such services in a given area of the City.

<u>Stakeholder Process</u>

The Board of Public Works directed Sanitation to gather input from all concerned stakeholders. Sanitation identified the following stakeholders: Waste Haulers and Recyclers, Waste Industry Workers, Environmental Organizations, Chambers of Commerce, Business Associations and Business Improvement Districts (BIDs), Neighborhood Councils, Renters, Apartment Owners and Associations, Community Members and Labor Organizations. Stakeholders were asked to provide input on the structure and potential impacts of waste hauling franchise options.

From July 16 to September 6, 2011, Sanitation held eight stakeholder meetings. Both morning and evening meetings were held in the downtown area. Two evening meetings were held at the Marvin Braude Building in the San Fernando Valley, and the Expo Center in South Los Angeles. Sanitation mailed over 1,700 stakeholder meeting notices and e-mailed over 2,000 notices. Notice of the meetings was also posted on Sanitation's web site. The meetings were attended by over 240 stakeholders (see Transmittal 5 for a list of attendees). Representatives from the Board of Public Works, Sanitation and HF&H Consultants attended all eight stakeholder meetings.

All stakeholder comments received are attached to this report (Transmittal 6). Comments received from the stakeholders can be grouped into five major categories. The categories include impacts or benefits to businesses, diversion, environmental issues, health and safety impacts to residents and sanitation workers, and exclusive versus non-exclusive franchise systems. Overwhelmingly most stakeholders recognized the need to modify the existing permit system to address State diversion mandates, City diversion goals, and environmental and health and safety issues. However, the stakeholders were divided on how the new franchise system should be established. The key issue was whether the system would be "exclusive" or "non-exclusive".

A summary of stakeholder comments received is shown below, and copies of all comments are shown in Transmittal 6. For ease of tracking, Table 1 presents the stated advantages of an exclusive or non-exclusive system as it relates to the various issues presented through the stakeholder process. Please note the table below is intended as an overall summary and does not denote the view of all stakeholders.

Table 1

Issue	Stated Advantages of an Exclusive System
Diversion	• Request for Proposals "bidding process" will let haulers propose higher diversion rates • Diversion programs will be easier to monitor • All business and residents will have the opportunity to recycle
Environmental	• Will ensure alternative fuel vehicles through the California Air Resource Board (CARB) • Will result in the least amount of vehicles on City streets • Will reduce impacts on City streets • Will improve air quality
Health	• Will improve overall air quality, particularly for those residents living in high density areas, by reducing truck traffic • Will improve working conditions for truck drivers • Will improve working conditions at material sorting facilities
Business	• Will normalize rates so small businesses don't pay higher cost • Businesses will get the advantage of the City's large bargaining power to negotiate lower rates
Issue	**Stated Advantages of an Non-Exclusive System**

Diversion	• The small to medium size haulers that have traditionally developed and offered recycling and diversion programs will continue to operate • Ongoing competition will allow hauler to compete for business through customized diversion programs • All business and residents will have the opportunity to recycle
Environmental	• Will ensure alternative fuel vehicles through the California Air Resource Board (CARB), if haulers are limited or the City requires
Business	• Businesses will continue to work with multiple haulers to negotiate the lowest rate • Businesses will continue to use their volume to negotiate the lowest rate • Will provide the highest level of customer service to businesses • Will allow businesses to utilize a different hauler if their needs are not being met • Businesses will not have to rely on the City to monitor their hauler for customer service • Will allow businesses with multiple locations throughout the City to maintain a single hauler • Will allow small waste haulers the ability to continue to operate

While the comments from each interest group were non-uniform, in general the majority of Environmental Organizations, Neighborhood Councils, Community Members, Renters, and Labor Organizations supported an exclusive franchise system. The majority of Waste Haulers, Businesses, Business Associations, Chamber of Commerce, Apartment Owners and Associations supported a non-exclusive system.

City of San Jose

As directed in the Huizar/Koretz motion on November 16, 2010, HF&H Consultants and City staff reviewed the City of San Jose's commercial waste hauling franchising efforts. San Jose has a population of approximately 1 million and disposes approximately 253,000 tons of commercial waste per year. Multifamily collection is serviced under a separate exclusive franchise. The commercial sector is currently serviced by approximately 20 haulers under non-exclusive franchise agreements with a three-year term to service San Jose's 8,000 commercial, industrial, and institutional waste generators.

As detailed in the attached HF&H Consultants report, there were similarities in challenges faced by San Jose and the City that prompted the need to analyze the redesign of the commercial waste hauling system. These challenges include the inability to achieve the zero waste, a green vision goal of diverting 100% of waste from landfills and limited controls available to ensure hauler performance. San Jose also noted challenges the City does not currently face that include declining city revenue from waste haulers due to fees based on disposal and limited infrastructure investment by haulers for recycling. The City of San Jose's commercial waste hauler system redesign spanned a 10 year period from the initial 5 year notice issued in 2001 to the contract award in 2011.

Upon a detailed analysis, the City of San Jose determined that an exclusive franchise would best address the city's challenges and issued an RFP in October 2009.

Details of their RFP included: a minimum diversion rate of 75%; ten to fifteen year term; option to award two franchises based on separate service areas; living wage and employee retention; consistent customer rates; fixed annual franchise fee; an AB939 Fee; and the exclusion of construction and demolition waste collection. Also, San Jose did not include residential, mixed use, or City facilities as part of its commercial franchise process, as there are already exclusive franchise agreements for the hauling of residential materials from single and multifamily housing.

On April 5, 2011, the City of San Jose approved the award of a single city-wide exclusive franchise with Allied Waste Services (Transmittal 3). San Jose also awarded a processing agreement for organic waste. The term of the franchise agreement is fifteen years, from July 1, 2012 to June 30, 2027. The commercial franchisee must remit an annual franchise fee of $11 million and an estimated $4.2 million in AB939 fees. The 15-year contract includes requirements such as:

- Living Wages;
- Alternative Fuel Vehicle requirements;
- 75% Diversion by January 2013; 80% by January 2014;
- Outreach, Education and Customer Service, with an extensive list of liquidated damages if service requirements are not met;
- The ability to modify the entire rate structure after 6 months if businesses with certain levels of service are experiencing a disproportional increase in rates over those with different levels of service (Rate Balancing).

San Jose included an extensive outreach and media program through the selected franchisee, to begin in advance of the July 2012 implementation date. The transition period for the exclusive franchise is anticipated to last through December 2014, with specific requirements on the contractor to implement recycling and provide rate balancing for some selected businesses.

Other City Franchise Models

For the purpose of this report, staff evaluated the City's taxi cab franchise system as a potential model for the waste hauler franchise system. The City of Los Angeles taxi franchise is managed by Los Angeles Department of Transportation (LADOT). Franchise agreements are awarded through an RFP process and evaluation is based on historical performance, experience, service response in under serviced areas, complaints under prior franchise agreements, health insurance for drivers, life insurance for drivers, and monitoring capabilities, including availability of computerized service monitoring. There are currently nine franchisees/taxi companies. For the purpose of the taxi franchise, the City approved the establishment of five franchise zones. The franchisee may only advertise in its zone assignments. However, the licensed/permitted taxis can operate in any zone within the City. The number of franchisees per zone range from one to seven. Based on the needs of the zone, LADOT establishes the number of vehicles allowed to operate within each zone by the franchisee. The franchisee usually does not have its own fleet of vehicles, rather it is made up of a "consortium" of taxi cab owners.

Taxi cab owners who are part of the franchise "consortium" may own multiple vehicles and may lease those vehicles out. LADOT maintains 16 positions to administer the taxi cab franchise.

The City taxi cab franchise is a unique system that works for taxi cab operation. Many components of this system are not typical to any waste franchise system evaluated as part of this report. Staff does not recommend using the taxi cab franchise system as a model for the waste hauling franchise.

Challenges To Be Addressed In the Franchise System

The proposed franchise system must address the many challenges the City currently faces. These challenges include new State mandates, City diversion goals, and the environmental and health impacts of waste hauling. The proposed system must also address health and safety requirements for employees collecting and processing commercial waste. While meeting the challenges the City faces, the proposed franchise system must also address the impacts on local businesses.

<u>Diversion Goals and a Franchise System</u>

A City franchise system must address the diversion goals, and program requirements and goals of the City and State. Mayor Villaraigosa has directed Sanitation to achieve a 70 percent diversion rate by 2013. In addition, the Mayor and City Council have adopted the RENEW plan, which directs Sanitation to reach a Zero Waste goal of 90% diversion by 2025. In 2006, the State's Global Warming Solutions Act (AB32) was adopted. One of the measures identified to reduce greenhouse gas emissions within the State was the adoption of mandatory recycling for multifamily, commercial, industrial, and institutional locations. In 2011, the Governor signed into law two other bills, AB818 and AB341. With the passage of AB818 and AB341, recycling is required at every multifamily dwelling over five units, and all commercial businesses that generate more than four cubic yards of trash per week (see Transmittal 7 for a list of Frequently Asked Questions). AB341 also requires CalRecycle to provide a report to the Legislature by January 1, 2014, that provides strategies and recommendations to achieve at least 75% diversion by 2020 for all waste generated in California. The City is also required to monitor compliance and notify businesses if they are out of compliance with this measure.

An exclusive franchise system allows for the most aggressive diversion goal to effectively meet the State mandates and City Zero Waste diversion goals. The HF&H Consultants report states that an attribute of an Exclusive Franchise is the potential for higher waste diversion as a result of increased recycling requirements in the franchise agreements that may not be cost-effective or accessible to all haulers in a non-exclusive system. The exclusive franchise system can contain mandatory diversion programs, maximum disposal rates, and reporting requirements. Franchised hauler(s) will be required to establish recycling programs at all multifamily properties and businesses. The City can set diversion program requirements for certain waste types through the franchise. For example, organic recycling programs can be required for businesses that generate large percentages of organic waste, such as restaurants.

As with many other jurisdictions with exclusive franchise agreements, the City would have the ability to set waste and recycling rates that incentivize recycling participation, including requiring no additional charges for recycling programs that include the collection and hauling of source separated recyclables.

With an exclusive franchise system, the City can hold a single hauler in each franchise area to a maximum disposal rate per franchise area versus a minimum diversion rate. Many jurisdictions with franchise systems set minimum diversion rates. However, minimum diversion rates do not address State requirements that set maximum disposal, may not meet the goal of zero waste, and can be easily manipulated by waste haulers. By setting maximum disposal rates, waste haulers would be required under the terms of the franchise agreement to not only establish mandatory diversion programs, but to also work closely with businesses to minimize disposal. The City would not be able to set maximum disposal rates under a non-exclusive franchise system. By the fundamental nature of a non-exclusive system, waste haulers' customer lists continually change, therefore a maximum disposal rate cannot be established.

Combining multifamily and commercial waste collection in an exclusive franchise system should produce the highest diversion levels. Waste haulers will be able to use the higher concentration of service accounts to develop efficient diversion programs. These programs could include establishing separate collection routes for recycling that include a combination of both multifamily and commercial accounts.

Although diversion requirements can also be set in a non-exclusive franchise, the City would most likely not realize the same level of participation from businesses as with an exclusive system. In a non-exclusive franchise system, such as the current system in San Jose, each waste hauler establishes and offers varied solid waste and recycling programs. In San Jose's current non-exclusive franchise system, only 51% of businesses participate in diversion programs. As detailed in the Commercial Redesign White Paper on the Current system Performance and Alternative System Arrangements, prepared for San Jose by HF&H Consultants, dated November 14, 2007 (see Appendix 9 of Transmittal 4), customer participation may be improved by offering a wide range of services to all customers on a consistent basis and educating the customers about their choices. The new franchise agreement in San Jose requires that the hauler reach 75% diversion from all commercial accounts by 2013, and 80% by 2014, through the application of a wet/dry system to capture and recycle organic waste as well as commingled recyclables, and an extensive outreach program with a minimum required staffing level of four full time employees to conduct the program. If a similar requirement were placed on City franchise haulers, over 50 full-time employees would be hired by the franchised haulers to conduct outreach and education programs for recycling.

The City has adopted a policy to provide a consistent type of recycling for the multifamily complexes within its borders. When the policy decision was made to begin a citywide multifamily recycling program, the source separated blue bin system was approved to provide the greatest consistency with existing single-family and LAUSD recycling services. The materials collected through these efforts have been consistent and outreach and education is combined, creating a simpler system to recycle in homes and schools.

The City should consider a policy implementing the same system Citywide for businesses as well, allowing all commercial establishments and multifamily residences consistency in the recycling services provided. Franchise agreements, while allowing for some flexibility depending on the type of waste collected, should require 'blue' recycling in the City of Los Angeles for all.

Environmental Impacts

Environmental impacts of the collection and management of solid waste in the City can be significant. Sanitation is recommending an exclusive franchise system to address some of the more significant impacts that are generated by these activities. A number of the most significant environmental impacts of waste hauling operations within the City are those caused by collection vehicles, through transportation impacts as well as vehicle emissions. Waste collection trucks have a direct adverse affect on air quality. Due to the necessity of waste collection in every corner of the City, the impacts are felt by all residents and businesses.

The impact of waste collection vehicles is compounded when there are more trucks in a small geographical area. Under the current unlimited open permit system there are inefficiencies in routing. These inefficiencies are due to the fact that there are often multiple haulers servicing properties in close proximity to each other on the same day. Due to these inefficiencies, there are more collection trucks operating on City streets than necessary.

In areas with a high concentration of multifamily properties these effects are typically worse than those with high concentrations of single family properties. For single-family homes, Sanitation's collection fleet moves from home to home in a regular pattern. Currently adjacent multifamily properties often have different waste haulers resulting in multiple waste haulers accessing neighborhoods each day. The resultant impacts include increased traffic, solid waste vehicles blocking street access, additional truck traffic and collection noise, and decreased air quality.

The SCAQMD adopted Fleet Rule 1193 for public and private solid waste collection fleets. This rule requires fleet operators to acquire alternative-fuel refuse collection heavy-duty vehicles when procuring these vehicles for use within the AQMD's jurisdiction. The rule applies to government agencies that operate solid waste collection fleets with 15 or more solid waste collection vehicles, and private entities that operate solid waste collection fleets with 15 or more solid waste collection vehicles. This rule also applies to private waste haulers that contract or franchise with a governmental agency that limits waste haulers allowed to operate. If the City provides refuse collection services by business permit or franchise and does not limit the number of waste haulers, then refuse vehicles operated by private waste haulers are not subject to these rules.

As detailed in the HF&H Consultants study, the franchising method selected by the City may determine whether waste haulers are required by the South Coast Air Quality Management District (SCAQMD) to replace existing refuse collection vehicles with alternative fuel vehicles. If the City enters into a franchise agreement that restricts the number of waste haulers that are allowed to provide service, the haulers operating under the new agreements will be required to use 100% alternative fuel solid waste collection vehicles(such as natural gas), or ultra low sulfur diesel fuel for pilot ignition, to be phased-in within 5 years of the start of service under the agreement, but no later than January 1, 2020.

If a hauler operates fewer than 15 solid waste collection vehicles in its entire fleet, it may be permitted to wait to purchase alternative fuel vehicles until its existing vehicles need replacement, or by January 1, 2020, whichever is first.

The proposed exclusive franchise system will ensure that private haulers operate alternative fuel vehicles within the City. In accordance with State regulations, an exclusive franchise will automatically trigger SCAQMD Fleet Rule 1193 compliance for all franchised waste haulers.

A non-exclusive franchise system does not necessarily trigger SCAQMD Fleet Rule 1193 compliance. However, a non-exclusive franchise where the number of waste haulers is limited would trigger the same clean fuel vehicle requirements. The City could require private waste haulers to operate alternative fuel vehicles under a system where the number of waste haulers is not limited, but then the requirement to monitor and enforce those requirements would fall on the City. Under an exclusive system, the SCAQMD monitors and enforces the fleet rule requirements.

Sanitation recommends that the franchised waste haulers be required to operate 100% clean fuel vehicles within twelve (12) months of award of the franchise. However, this requirement may inhibit small waste haulers, those operating a fleet with less than 15 vehicles, from submitting a proposal. Small waste hauling companies may not have the capital to transition their fleet within the 12 month period. To ensure small haulers are not adversely impacted due to lack of capital resources, the phase in period for small haulers to operate alternative fuel vehicles can be extended. These haulers may phase in vehicles when they add or replace alternative fuel vehicles in their fleet or 100% of their fleet by 2020, in accordance with Fleet Rule 1193. To further assist smaller waste hauling companies, Sanitation will work with haulers to identify State grants designed to assist in the purchase of alternative fuel vehicles. Sanitation has received a total of $20 million in grants to assist in converting its fleet to clean fuel, and these grants are also available to private waste haulers.

Under the proposed exclusive franchise system the City anticipates the largest reduction in the number of trucks and the greatest reduction in negative environmental impacts. As stated in the HF&H Consultants study, "An exclusive franchise system will result in the fewest number of commercial refuse vehicles, and minimize the environmental footprint of solid waste operations by decreasing truck traffic, vehicle emissions, and pavement damage." This finding is further supported in the Los Angeles County report titled Solid Waste Collection Systems, Option Analysis, dated February 2001 (Appendix 8, Table 4-1 of Transmittal 4), which states a benefit of an exclusive franchise is "Efficiency is high because the routes and schedules are organized and overlapping collection routes are minimized." These efficiencies are maximized with a franchised system where multifamily and commercial collection is combined. A combined franchise system allows a waste hauler to consolidate collection from multifamily and commercial, where feasible, reducing the need to run separate trucks. An exclusive franchise system with combined multifamily and commercial services provides increased efficiencies, and when combined with the requirement of alternative fuel vehicles, provides the lowest air quality impacts possible.

San Jose's franchise redesign is intended to increase efficiency of the collection system and thus cut truck traffic, fuel consumption, air emissions, noise, and wear on City streets; while expanding recycling from 3,800 of the commercial businesses to all 8,000 commercial businesses, through the implementation of a wet/dry collection system. San Jose conducted an Initial Study and has adopted a Negative Declaration for the implementation of their exclusive commercial franchise system redesign.

Health Impacts and Working Conditions

Waste hauling and waste processing have an impact on residents and workers alike. Waste collection trucks on City streets have a direct impact on air quality affecting all those that live and work in the City and drive the collection trucks. Working conditions at waste processing facilities have been brought into question. This point is unfortunately highlighted with the recent tragedy at a facility when two workers lost their lives. Although this tragedy is still under investigation, it emphasizes the need to ensure that waste generated in the City is not only diverted, but is handled in a responsible and safe manner.

In other jurisdictions, franchise agreements in general do not address workplace safety requirements. Some require their franchise haulers to submit compliance and inspection reports from State regulatory agencies. San Jose, in its agreement, requires an Employee Work Environment Evaluation (Third Tier Review). This evaluation looks into a proposer's history as an employer and work condition commitments. Each proposer is required to complete an Employee Work Environment Questionnaire and return it with the proposal. If the Questionnaire is not returned, the proposal will be deemed nonresponsive. San Jose required proposers to address: employee health benefits; compensated days off; employee complaint procedures; compliance with state and federal workplace standards; and Employee Retention requirements, if applicable. It does not, however, appear to include inspections or other ongoing facility/site workplace safety evaluations.

The exclusive franchise will be developed to address labor concerns and worker safety. The City will have extended oversight and enforcement capabilities of facilities used to handle City waste under an exclusive franchise. These facilities become subcontractors under the franchise agreements and subject to City policies. The franchise contracts would include standard City labor language such as living wages requirements and first source hiring. The franchise contract will contain specific language granting the City authority to inspect the waste haulers' facilities and approve and inspect all waste and recycling facilities utilized. Through the establishment of administrative franchise fees, a franchise inspection section will be established within Sanitation. The inspection staff will inspect, on a regular basis, all facilities for compliance with City labor requirement such as living wages and workplace safety. Violations of labor requirements or workplace safety could result in the termination of the franchise.

The franchised waste haulers, as well as all facilities they utilize, will be required to maintain documentation on the handling of all material collected or received and maintain inspection records from other compliance agencies, such as the Cal-OSHA or the State Lead Enforcement Agency. City staff will have the right to audit the records at all facilities. Failure to maintain accurate documentation could result in the termination of the franchise.

Business Impacts

A City franchise will affect local businesses and apartment owners. Many local businesses, business associations, apartment owners, and apartment owner associations have voiced concern over the potential cost impacts and level of service that an exclusive franchise might have. The majority of businesses that attended the stakeholder meetings stated that an exclusive franchise would affect their ability to manage their waste hauling contracts.

These stakeholders were concerned that an exclusive franchise would reduce price competition, resulting in higher rates. There was also concern with potential poor customer service, and with a franchised waste haulers' ability to accommodate special collection needs. Apartment owners expressed concern that due to the City's Rent Stabilization Ordinance (RSO) they would not be able to pass through higher costs of waste collection that may result under an exclusive system. Other stakeholders, however, have highlighted the disparity of rates for similar levels of service and limited access to recycling programs.

Businesses have stated that an exclusive franchise would eliminate their ability to negotiate for their own waste services on a regular basis which in turn will increase waste collection rates. Under the current system waste haulers compete for waste collection services at each business. In turn business can negotiate collection rates with any of the City's permitted waste haulers. Although individual competition will be eliminated in an exclusive franchise system, waste haulers will still compete through the RFP process. The City will have the largest franchise system in the nation. Waste haulers will be competing for substantial franchise contracts that are recommended to extend for a long term. The City's goal is to leverage its large collection needs through long term franchise contracts and to negotiate low rates through the competitive bidding process.

Through the RFP and contract development process, staff will work to minimize the impacts to rates. Proposers will be asked to submit detailed information on their existing rate structure and levels of service as part of the RFP process. Sanitation will use this information along with proposed rates to help determine the impact on rates through the franchise contracts. If necessary, staff will evaluate the option of gradually increasing rates during the early years of the franchise to mitigate any significant increases. In the draft franchise contract for San Jose, the entire rate structure is evaluated after six months whereby the franchised hauler is required to identify if their rate structure resulted in disproportional increases to businesses with different levels of service. Under this model the rates would be adjusted, with some rates for specific levels of service going down, while others go up. This model may work in San Jose with only 8,000 commercial service accounts, but may not be practical in the City with an estimated 100,000 service accounts.

As recognized in the HFH Consultants report, an exclusive franchise may reduce commercial customer solid waste rates for some customers and increase rates for other customers. The City must comply with new State regulations requiring recycling at certain businesses and multifamily properties. In addition, the City has a goal of achieving zero waste. Also, in order to improve air quality, the City must move to require that waste haulers operate alternative fuel vehicles. It is important to note that in order to meet these diversion goals and requirements the cost of collecting and recycling materials in the City will most likely increase.

Benefits of an exclusive franchise system include potential reduced operating cost to the franchised waste hauler and consistent rates to business. As noted in the HF&H Consultants report, the routing efficiencies of an exclusive system could result in an overall reduction in the contractor's cost of providing service. These reductions in cost typically include fewer miles traveled, less driver hours, less vehicle wear and tear, and less fuel, per vehicle load. An exclusive franchise system will necessarily involve a consistent rate structure for similar levels of service. As it will be included in the rates, all City businesses will have access to recycling programs at no additional cost.

The City will be able to establish baseline rates for all businesses in the franchise contracts. Any increases to these rates will also be set in the franchise agreements. This will allow City businesses the ability to plan for the current and future cost of collection.

The City will require a high level of customer service through contract requirements, inspections and enforcement. Businesses will have the ability to utilize the City to ensure all contractual obligations are met. Sanitation will maintain the necessary staffing, as will be detailed in the Franchise Implementation Plan, to respond to customer service issues and ensure compliance with contract requirements. The franchise contract will detail service requirements and contain penalties and fines for poor customer service. The San Jose draft contract, for example, identifies twenty-two separate service components where liquidated damages (fines) can be applied for failure to comply. These range from failure or neglect to resolve any complaint within the requested time to dispose recyclables. The liquidated damages range varies for each service component and range from $100 to $5,000 per incident. Poor customer service could result in a hauler losing its franchise and affect future waste hauling franchise opportunities. Back up waste hauler(s) will be established through the franchise RFP process. The purpose of the backup waste hauler(s) will be to ensure there is no lapse in service if the franchised hauler is unable to fulfill its contractual obligations.

As stated above, apartment owners expressed concern that due to the City's Rent Stabilization Ordinance (RSO) they would not be able to pass through higher costs of waste collection that may result under an exclusive system. The RSO affects units for which a certificate of occupancy had been issued as of 10/1/78 and does not affect units with certificates of occupancy after that date. The RSO covers approximately 66 percent of the City's rental housing inventory. This represents approximately 638,000 units. For RSO covered units, property owners are entitled to increase rent based on CPI. The CPI increases are a minimum of 3 percent and up to 8 percent, as approved by City Council. Property owners can also apply under a separate process for extraordinary increases to maintain their NOI, or net operating income, in order to offset increased costs, which could include waste collection. For units not covered by the RSO, there are no City restrictions on the property owners' ability to pass though increases in cost. The full effect of the exclusive franchise system on properties that fall under the RSO is difficult to ascertain. As stated above, consistent overall rates may result in an increase in rates for some customers and decrease in rates for others.

Combining Multifamily and Commercial Franchises

Combining multifamily and commercial waste collection in an exclusive franchise system will result in the highest diversion rate, highest routing efficiency, and lowest vehicle emissions possible. Waste haulers will be able to use the higher concentration of collection points to develop efficient diversion programs for different types of generators. A combined franchise will allow the hauler to implement recycling programs that promote consistent recycling messages to all commercial establishments and multifamily residences. An exclusive franchise system will result in the largest reduction in the number of trucks and the greatest reduction in negative environmental impacts. These efficiencies are maximized with a franchised system where multifamily and commercial collection is combined. This combined franchise system allows a waste hauler to consolidate collection from multifamily and commercial, where feasible, reducing the need to run separate trucks.

Fewer trucks will mean less traffic, and less noise. An exclusive franchise system with combined multifamily and commercial services provides the greatest relief to congestion of City streets. Increased routing efficiencies combined with the requirement of alternative fuel vehicles will achieve the lowest air quality impacts possible.

Proposed System

Sanitation recommends that a combined multifamily and commercial exclusive franchise with waste collection zones be established as it will allow the City to better deal with the challenges it faces. Under an exclusive franchise, waste collection services for multifamily and commercial properties will be combined into a single Request for Proposals (RFP) and all services will begin after the expiration of the five-year notice to permitted waste haulers for commercial waste collection, December 2016. As pointed out in the HFH Consultants study, approximately two-thirds of Los Angeles County cities have an exclusive commercial solid waste franchise system, and five of the ten largest cities in California have or are transitioning to exclusive commercial franchise systems. Sanitation recommends that a total of eleven collection zones be established. Sanitation further recommends that franchise agreements be ten years and that certain exemptions to the franchise system be granted based on material type. A Franchise Administrative Fee is required as part of the proposed exclusive franchise system to provide full funding for the administration and operation of the new system. The SRCRD, within Sanitation, will be responsible for the development of the Solid Waste Franchise RFP and associated ordinances, franchise/contract negotiation and development, and franchise implementation and compliance.

Franchise Terms

Sanitation recommends that the term of the franchise agreement be ten years with two five (5) year renewal options. The successful franchisee will be required to invest substantial capital necessary to operate within a franchise area. The franchised waste hauler will need to invest in clean fuel vehicles, new waste and recycling containers, perform outreach, and hire additional employees for reporting and customer service. Franchised haulers may also need to perform facility/collection yard upgrades and invest in fuel infrastructure. Waste hauling companies typically amortize their equipment over a seven year period. As detailed below, there will be a two year transition period.

A ten year contract will allow franchised waste haulers to fully amortize their investment while accounting for the transition period. A less than ten year term may increase rates since waste haulers will need to amortize equipment over a shorter period.

As stated in the HF&H Consultants report, most exclusive franchises are for a term of five to ten years. Sanitation staff also surveyed cities in Los Angeles County and larger cities nationwide. Of the 22 cities that reported having an exclusive franchise, 14 reported having franchises in excess of 6 years. Some larger cities, such as San Jose and Seattle, reported having franchise agreements in excess of 11 years.

Sanitation further recommends a two year transition and implementation period for the franchise. Sanitation will develop a Transition Plan as a component of the franchise agreements. The transition period will begin on the award of the franchise. Service will begin within the transition period as detailed in the Transition Plan.

An estimated 100,000 service locations (accounts), serviced by over 44 waste haulers will need to be transitioned to the franchised waste haulers. The franchised waste haulers will need to secure bins, purchase vehicles and develop the necessary supporting infrastructure. The franchised waste haulers will be responsible for public education, outreach and training to businesses on the transition and implementation of new recycling programs. The city of San Jose, with only 8,000 service locations, included a two year transition and implementation period when they recently moved from a non-exclusive to an exclusive franchise. San Jose included the following components in their transition and implementation plan:

- Contract Execution
- CNG Fueling Station
- Customer Database Development and Management
- Routing / Mapping
- Incremental Personnel Hiring and Training
- Driver Hiring and Training
- Public Education and Outreach
- Communication Plan
- Truck Procurement

<u>Franchise Areas</u>

Sanitation recommends the City be divided into multiple franchise collection areas. A franchise system for the City, due to its size, geography, and demographics, will be the largest and most challenging to develop in the nation. Approximately 1.8 million tons of waste is disposed annually from commercial businesses. The City is spread over 460 square miles. Sanitation estimates that there are about 100,000 commercial and multifamily service locations within the City. By comparison San Jose has 8,000 (commercial only) service accounts; Austin, Texas (downtown only) has 400; Portland Oregon has 18,100; San Francisco has 20,243; Stockton has 5,000; and Seattle, Washington has 10,000.

Multiple franchise areas will allow the City to ensure there is a sufficient pool of qualified waste haulers to meet current and future collection and diversion needs. As stated in the HF&H Consultants report, the City's current open permit system has allowed waste haulers to grow into larger companies. Most jurisdictions in and around the County of Los Angeles have exclusive franchise systems, limiting the number of haulers from outside the City that could propose on future franchise contracts. Multiple franchise areas, potentially awarded to multiple haulers, should foster growth and maintain stability of multiple haulers that could meet the current and future needs of the City. Conversely, if a single waste hauler was awarded the waste franchise, given the limited contracting opportunities for haulers outside the City, there would be fewer haulers in the future with the resources to compete for a City franchise. Sanitation recommends that back-up waste hauler(s) be established, within the awarded franchisees, through the franchise RFP process. The purpose of the backup waste hauler(s) will be to ensure that there is no lapse in service if the franchised hauler is unable to fulfill its contractual obligations.

Franchise boundaries must foster the City's ability to reach its environmental and financial goals. When establishing franchise areas many factors must be considered, including geographical boundaries, number of service locations or amount of waste generated, and proximity to infrastructure. The City has natural topography, such as the Santa Monica Mountains, which must be taken into consideration. Utilizing natural breaks in the boundaries will help improve routing efficiencies within the franchise areas. For clarity to businesses and for ease of administration, the boundaries should be easily recognizable, such as utilizing major thoroughfares as boundary lines.

Staff recommends the development of eleven franchise areas. The franchise areas would be established by dividing five of Sanitation's current six waste sheds into two franchise zones for a total of eleven franchise areas. These areas make the best use of the natural and manmade topography and work well with existing infrastructure. Mirroring the franchise boundaries with Sanitation's wasteshed boundaries allows Sanitation to easily track both Sanitation collected material and commercial material together, for the first time. This ability will assist Sanitation in siting future facilities to meet the needs of both waste streams.

Sanitation's current wastesheds already make use of obvious boundary delineations. The Santa Monica range that establishes the valley area is used as the southern boundary of two of Sanitation's existing zones. The San Pedro wasteshed, which staff does not propose dividing into additional waste franchise areas, was established considering the geographic nature of its location. The 405 freeway, the unofficial dividing line between the east and west valley, divides the valley in two equal sections. The current boundary between two of Sanitation's wastesheds closely tracks the 405 freeway.

The franchise areas should be varied in size to allow both small and large waste haulers the opportunity to compete. There are many smaller sized waste haulers providing service throughout the City. These smaller haulers currently service between 500 and 1,000 locations each. The largest haulers service over 20,000 locations each. Smaller haulers may not currently possess the infrastructure or capital to propose on large franchise areas. However, if given the opportunity, smaller haulers may be more competitive than larger haulers. A system with varied sized franchised areas will allow small and large haulers to compete and provide the greatest benefit to the City.

Smaller haulers can compete by utilizing their unique and innovative approach that small business often brings with it, while larger haulers can utilize their robust infrastructure and economies of scale to compete for the larger or multiple franchise areas.

Sanitation issued a request in October 2011 to all permitted waste haulers in order to gather detailed information on the number of service locations throughout the City. This data has undergone preliminary analysis by the Bureau, for the purpose of developing plans for the division of the City into franchise areas. One such plan under review involves eleven (11) franchise areas, based on the number estimated number of service account, preserving the existing Harbor area waste shed as a separate franchise area and dividing the remaining five (5) existing waste sheds to create ten (10) more franchise areas. As set forth in Recommendation #11 above, Sanitation would return with a Franchise Implementation Plan, which includes a map with proposed franchise area boundaries, using the approach and criteria discussed in this Report.

Customer service and public education

In order to ensure consistent service and address public questions and concerns, the Sanitation hotline will be the focal point for customer interaction. Sanitation anticipates that customer service demands will increase upon the execution of the franchise agreements, both during the notification phase, the transition phase, and then for ongoing service and billing concerns. While each franchise zone agreement will require that the hauler provide on-site, hands on education and assistance, the first call if there is an issue will be the City. Additional staffing will be necessary and the development of live tracking of container and bin collection, notification, and monitoring for service issues, resolutions, and questions for the commercial sector will require modifications to Sanitation's Solid Resources Call Center. These needs will be detailed in the Franchise Implementation Plan.

One of the benefits of having the blue recycling system in both residential and schools is that a simple, consistent message can be given to all participants. The City should consider a minimum requirement for all source separated recycling to be a 'Blue' system. There will be a need for an extensive public education and information campaign, beginning in advance of the selection of the franchisee for each collection zone. Sanitation anticipates that a public outreach plan will begin upon release of the RFP, with information disseminated to the City's business and multifamily sectors. With approximately 100,000 commercial collection accounts in Los Angeles, making sure that outreach materials in several languages describing the coming changes to the waste collection system reach and are understood by the recipients will require both staffing and education funds for the first phase of the project.

Sanitation recommends that requirements similar to those in the San Jose model be included in the franchise agreements approved by the City. These requirements for a minimum staffing level of education and outreach experts per zone, as well as the requirements to disseminate educational materials, and having dedicated staff to answer service concerns, will result in at least 50 new full time private sector jobs.

Exemptions and specialized services

Exemptions from the City's proposed franchise system should be granted for certain material types, as follows:

- Medical waste
- Hazardous waste
- Construction and Demolition waste
- Radioactive waste
- Pharmaceutical waste
- Recyclables that have value to the generator, and are sold or donated
- Green waste removed from a site as incidental to a landscaping business, provided that the landscaping business documents the locations where green waste is recycled.
- Other specialty waste as designated by Sanitation (e.g. biosolids, oils and grease, etc.)

Sanitation recommends that solid waste that is kept separate from exempted waste be included in the exclusive franchise system. Sanitation does not recommend that exemptions be granted based on business type.

As stated in the HF&H Consultants report, hazardous waste and medical waste transportation are regulated by the California Department of Toxic Substances Control (DTSC), the California Health and Safety Code, and the United States Department of Transportation. The majority of solid waste haulers do not hold the necessary registrations and licenses to haul hazardous and medical waste as defined by the California Health and Safety Code. These services are typically exempted from exclusive solid waste franchises. In addition, medical and hazardous waste is not tracked as part of the State diversion requirements and does not affect the City's Zero Waste goal.

Staff found similar exemption language in the City of San Jose's agreement: "Exempt Waste: Sludge, stable matter, used oil or used oil filters, automobiles, automobile parts except those which fall within the definition of Recyclable Material, boats, boat parts, boat trailers, internal combustion engines, waste under the control of the Nuclear Regulatory Commission, biohazardous or biomedical waste that may cause disease or reasonably be suspected of harboring pathogenic organisms including human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves from the operation of medical clinics, hospitals, and other facilities that process this waste; Hazardous Waste as identified in California Code of Regulations, Title 22, Division 4.5, Chapter 23, as may be amended; and electronic waste (E-Waste) such as discarded electronics equipment containing cathode ray tubes (CRTs) computers monitors, televisions, stereo equipment, peripherals and other electronic equipment."

Sanitation staff evaluated the various types of exemptions that could be included in the franchise system as well as mandatory exemptions that must be included by case law. Exemptions can be granted by business type, by specific large businesses, by multifamily complexes, by material type or any combination thereof. Sites under the jurisdiction of another agency, such as County, State, or Federal agencies, do not have to participate in a franchise system. This includes school districts. However, the County of Los Angeles does use the franchised haulers in the jurisdictions where their facilities are located. Other sites will be evaluated on a case by case basis.

Some businesses noted through the stakeholder process that their waste service was unique and could not be serviced under an exclusive franchise model. Hospitals noted that their waste stream, containing medical waste, requires special handling. Others, such as large movie studios and universities, stated that they have a complex system of waste handling that included a combination of mixed waste and source separated recycling, organic recycling and temporary service.

Staff does not recommend that exemptions be granted based on business type. Large businesses are not typically exempted in franchise agreements. Staff received comments from the Hospital Association of Southern California requesting an exemption from the franchise system. Sanitation staff contacted other cities with exclusive solid waste franchises with large hospitals located within their jurisdictions. Kaiser Permanente, City of Hope and Loma Linda University hospitals are located in the cities of Downey, Duarte, and Loma Linda, respectively.

Medical waste (often referred to as "red bag" waste) and pharmaceutical waste are regulated by the California Department of Public Health, are not included in the definition of commercial solid waste, and therefore are not included in the solid waste franchises in these cities. However, in each of the cities contacted, there are no franchise exemptions granted to these hospitals with respect to their commercial solid waste. Collection of commercial solid waste, generated by the hospitals, is serviced by the assigned franchised haulers.

It is further recommended that collection and hauling of construction and demolition (C&D) waste be excluded from the proposed exclusive franchise system. On December 17, 2010, the City Council approved a mandatory Citywide C&D Recycling program. The ordinance went into effect on January 1, 2011. Under this new ordinance, all mixed C&D waste generated within the City must be taken to City Certified Processors of C&D waste. There are currently 11 Certified Processors of C&D waste. As such, inclusion of this material in the franchise system is not necessary to meet State and City diversion goals. It should also be noted that the 5-year notice approved by the City Council on December 6, 2011, excluded the collection of C&D waste from a proposed franchise system. Many of the smallest waste hauling companies operating within the City solely collect C&D material. Exclusion of C&D helps protect the smallest of waste hauling businesses operating with the City.

Source-separated recyclables that are sold by the owner (business) would be exempt from the franchise requirements. On March 31, 1994, the Supreme Court of California noted that local governments may award an exclusive franchise for solid waste handling services; however, items with economic value to their owner do not fit the definition of solid waste. As such, the following should be exempt from the exclusive franchise system:

- All recyclable materials source separated from solid waste by the owner and/or operator of the premises from which the solid waste was generated, whereby the generator of the waste sells or is otherwise compensated by a collector of the recyclable materials in a manner resulting in a net payment to the owner and/or operator.
- Recyclable materials and green waste source separated at the premises by the owner and/or operator of the premises and donated to a youth, civic or charitable organization.
- Green waste removed from premises by a gardening, landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service rather than as a hauling service.

Administration of the Franchise System

There are several phases to implementing a Franchise System in the City. First is the development and adoption of a policy by the Mayor and City Council directing the Board and Sanitation to move forward with a RFP and ordinance changes needed for the franchise.

The policy decision begins the process of environmental review concurrent with the development of the draft RFP and required ordinance changes. Upon completion of these efforts, the Mayor and City Council will consider directing Sanitation to release the final RFP, adopt ordinances defining the program, and certify any environmental review documents.

The next phase is the receipt of proposals, any clarification or short-list process, and the evaluation of the proposers. Sanitation would then return to the Board of Public Works for permission to negotiate with the selected proposer in each service area. Contracts are negotiated and processed for the award of the franchises; these contracts would be presented at the Board of Public Works and be forwarded to the Mayor and Council for final approval.

Following the contract award would be the transition phase, which may last for approximately two years as service changes take place in the private sector. Accounts cannot be transitioned to the franchise haulers until the end of the five-year notification period, but notification of City businesses and education about the changes in the hauling system will begin well in advance of December 2016.

At each step and level of the process, City staff will be needed to accomplish the implementation of the program. Private sector expertise will be sought as well to provide specific assistance with contract development and negotiations with the selected franchisees.

Staffing Requirements

The implementation of a new franchise system in the City of Los Angeles is a significant administrative undertaking and will require the creation of a Franchise Section within the Solid Resources Citywide Recycling Division in Sanitation.

It is anticipated that the new section's workload will include the following tasks to be completed by City Personnel:

- Development of Franchise areas, Terms and Conditions, and development of a Commercial Franchise Implementation Plan;
- Preparing and issuing Task Order Solicitations and contracting with vendors providing specialized franchise development services;
- Preparation and processing of multiple RFP;
- Public Hearings and incorporation of comments;
- Response to questions and comments from the general public, potential contractors and subcontractors, and other interested parties;
- Review and assessment of hauler proposals;
- Creation and maintenance of multiple franchise agreements, with hauler performance and reporting standards;
- Assessment of State mandated data reporting requirements;
- Creation and maintenance of a data collection system for meeting State reporting requirements;
- Design and implementation of an outreach program for a smooth transition, including the increase of available staff for call center due to anticipated increase in call volume;
- Enforcement of hauler service levels and citation of haulers in violation of franchise agreements; and,
- Day-to-day operational needs of a Franchise program including addressing vendor concerns, citizen complaints, and field checking program operation.

The new Franchise Section will be needed in addition to the current Private Hauler permitting effort. Sanitation has proposed to exclude the hauling of commercial Construction and Demolition (C&D) debris from the franchise agreements. C&D recycling is mandatory and no additional diversion measures are recommended for this material. Therefore, the majority of the small waste haulers and the contractors that are permitted as waste haulers will continue to receive annual permits and decals for their trucks. Businesses or organizations that are exempted from the franchises may chose a non-franchised hauler to service their site and Sanitation will also have to continue to permit that private hauler as well. Sanitation will also have to monitor the exempted businesses to make sure that their service providers meet clean air and recycling requirements through an enhanced system to be established by ordinance.

Sanitation recognizes the financial difficulties faced by the City. None of the requested position unfreezes will be funded by the General Fund, but by Sanitation's Special Funds. It is recommended that a Franchise Administrative Fee be developed and approved with a Franchise Implementation Plan to provide ongoing funding for the resources needed to implement this program. Until program adoption takes place, Sanitation does require that six positions be unfrozen within the SRCRD to assist in program development. New positions will be requested through the development of the Franchise Implementation Plan.

In Fiscal year 11-12, four positions were transferred to SRCRD from existing vacancies within Sanitation to assist in development of a multifamily franchise, and all positions continue to be vacant. The multifamily segment of the commercial wastestream is only 30% of the total commercial wastestream, and although there are some economies of scale during implementation by combining the efforts to franchise these sectors, the scope of the project now includes tens of thousands more commercial accounts.

Sanitation requests that the Mayor and City Council direct an immediate unfreeze for the following positions:

1 – Environmental Affairs Officer (AB939 Compliance and Franchise Development)
1 – Environmental Supervisor I (Franchise Development Manager)
1 – Clerk Typist
1 – Management Analyst II
1 – Environmental Engineering Associate II
1 – Senior MAII (Financial, Data, and Compliance/Administrative Fee Development)

All positions exist and are fully funded by the Citywide Recycling Trust Fund (CRTF).

<u>Fees and Revenue</u>

Waste hauling franchise agreements all contain fees levied upon the franchised hauler. These fees typically fall into three main categories; administrative fees, franchise fees, and one time upfront payments for the right to operate. These fees are distinctively different in form and function and must be considered independently.

Franchise Administrative fee

Sanitation recommends that an administrative/AB939 fee be adopted that will provide sufficient funds to implement and manage the franchise system and diversion programs. It is recommended that a Franchise Administrative Fee be developed and approved as part of the proposed exclusive franchise system. Sanitation will prepare a Franchise Implementation Plan detailing the necessary staffing levels to complete each of the stages of development and implementation of the franchise system. The Franchise Administrative Fee will provide ongoing funding for the resources needed to implement this program, and to provide for City diversion programs. Until program adoption takes place, Sanitation does require that the six positions listed above be unfrozen within SRCRD to assist in program development. New positions will be requested through the development of the Franchise Implementation Plan.

Franchise fees

Franchise fees are implemented through the majority of franchise agreements. These franchise fees can be based either on gross receipts, as the AB939 Compliance fee is collected, or as a flat annual fee. Sanitation recommends City Attorney's Office review of the applicability of fees for general City purpose use from a waste hauler franchise system.

Onetime payment

Many jurisdictions receive an upfront payment for the right to operate under a franchise system. These payments are in addition to any administrative or other ongoing fees, and are generally included in the evaluation of the proposals received for the franchise.

Recommendations

Sanitation recommends direction and authorization to draft a Request for Proposals for an exclusive franchise system for the collection of solid waste from commercial and multifamily properties and to establish franchise collection zones. Sanitation recommends authorization to begin the CEQA process necessary to establish an exclusive franchise system for the collection of commercial waste. This would also include a request to the City Attorney to prepare a final draft ordinance for an exclusive waste hauler franchise for commercial waste hauling within the City of Los Angeles. Sanitation further recommends the immediate unfreeze from managed hiring of six positions in Sanitation for development of the franchise system

Respectfully submitted,

ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

Prepared by:
Daniel Meyers, SRCRD
(213) 485-3774