



County of Fresno

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Fresno, California
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Legislation Details (With Text)

File #: 18-1229 **Name:** Limited Amendment to Exclusive Service Area Program Agreements

In control: Public Works & Planning

On agenda: 11/6/2018 **Final action:** 11/6/2018

Enactment date: **Enactment #:** Agreement No. 17-564-1, Agreement No. 17-565-1, Agreement No. 17-566-1, Agreement No. 17-567-1, Agreement No. 17-568-1, Agreement No. 17-569-1, Agreement No. 17-571-1

Title: Approve and authorize the Chairman to execute Amendment I to the following Exclusive Service Area Program (ESAP) Agreements with: Allied Waste Services of North America, LLC (Agt. No. 17-564), Granite Solid Waste, Inc. (Agt. No. 17-565), Mid Valley Disposal, LLC (Agt. No. 17-566), Miramonte Sanitation, Inc. (Agt. No. 17-567), Orange Avenue Disposal, Inc. (Agt. No. 17-568), Peña's Disposal, Inc. (Agt. No. 17-569), and USA Waste of California, Inc. (Agt. No. 17-571), for a recycling surcharge overlay of 1.45% to be imposed on all subscribers of waste collection services, effective January 1, 2019; approve and authorize the suspension of fees associated with the Non-Exclusive Waste Hauler Agreement (NEWHA) program for the period of July 1, 2018 through December 31, 2018; direct staff to continue efforts to execute agreements with additional Non-Exclusive Waste Haulers; and authorize the Department of Public Works and Planning to issue up to three warning notices to solid waste enterprises engaged in waste collection activities in violation of Ordinance Code Chapter 8.24, prior to issuance of administrative fines pursuant to Ordinance Code Chapter 1.13

Sponsors:

Indexes:

Code sections:

Attachments: 1. Agenda Item, 2. Agreement A-17-564-1 with Allied Waste Services, 3. Agreement A-17-565-1 with Granite Solid Waste, 4. Agreement A-17-566-1 with Mid Valley Disposal, 5. Agreement A-17-567-1 with Miramonte Sanitation, 6. Agreement A-17-568-1 with Orange Avenue Disposal, 7. Agreement A-17-569-1 with Pena's Disposal, 8. Agreement A-17-571-1 with USA Waste

Date	Ver.	Action By	Action	Result
11/6/2018	1	Board of Supervisors	Conducted Hearings	Pass

DATE: November 6, 2018

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Amendments to the Exclusive Service Area Program Agreements, Suspension of Fees, and Warning Notices pertaining to the Non-Exclusive Waste Haulers Agreement Program

RECOMMENDED ACTION(S):

1. Approve and authorize the Chairman to execute the following amendments to the Exclusive Service Area Program Agreements:

- **Amendment I to Agreement No. 17-564 with Allied Waste Services of North America, LLC**

- **Amendment I to Agreement No. 17-565 with Granite Solid Waste, Inc.**
- **Amendment I to Agreement No. 17-566 with Mid Valley Disposal, LLC**
- **Amendment I to Agreement No. 17-567 with Miramonte Sanitation, Inc.**
- **Amendment I to Agreement No. 17-568 with Orange Avenue Disposal, Inc.**
- **Amendment I to Agreement No. 17-569 with Peña's Disposal, Inc.**
- **Amendment I to Agreement No. 17-571 with USA Waste of California, Inc.**

for a recycling surcharge overlay of 1.45% to be imposed on all subscribers of solid waste, recycling, and green waste collection services plus revised maximum cart and bin rate tables, which reflect the recycling surcharge overlay, effective January 1, 2019 through June 30, 2020; and direct staff to continue working with the Exclusive Service Area Program Haulers to develop a recycling surcharge overlay that appropriately reflects any increase or decrease of recyclable commodities.

- 2. Approve and authorize the suspension of collection and payment of fees associated with the Non-Exclusive Waste Hauler Agreement program for the period of July 1, 2018 through December 31, 2018; and direct staff to continue working with the Non-Exclusive Waste Haulers in an effort to execute agreements with haulers not yet signed up as an Non-Exclusive Waste Hauler.**
- 3. Authorize the Department of Public Works and Planning to issue, at the American Avenue Disposal Site or any other waste processing facility located within Fresno County, up to three documented warning notices to solid waste enterprises engaged in waste collection activities in violation of Fresno County Ordinance Code, Title 8 - Health and Safety, Chapter 8.24 - Non-Exclusive Waste Hauler Agreement Program, prior to issuance of administrative fines as provided for in Fresno County Ordinance Code, Title 1 - General Provisions, Chapter 1.13 - Administrative Fines.**

Approval of the first recommended action will authorize a limited amendment to the Exclusive Service Area Program (ESAP) agreements implementing a recycling surcharge overlay to compensate identified ESAP haulers for increased processing costs as a result of negative recycling market conditions and directs staff to work with the ESAP haulers on a more permanent surcharge overlay that appropriately reflects changes to the recycling commodities. Approval of the second and third recommended actions will suspend Non-Exclusive Waste Hauler Agreement (NEWHA) fees until December 31, 2018 and authorize the issuance of warning notices at American Avenue Disposal Site and other waste processing facilities located within the County in relation to the NEWHA program; prior to issuance of administrative fines. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may choose to not approve the first recommended action and direct staff to return at a later date with revisions to amendments. Additionally, your Board may choose to not approve the second and third recommended actions; however, this would place the current NEWHA haulers at a financial disadvantage from those haulers who have failed to execute NEWHA agreements with the County.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. Assembly Bill 939 - Integrated Waste Management Act (AB 939) service fees remitted to the County by the ESAP haulers, fund the ongoing administration of the ESAP. Service fees remitted by NEWHA haulers fund the ongoing administration of the NEWHA Program. Sufficient appropriations and estimated revenues are included in the Department - Resources Division, Org 9015, FY 2018-19 Adopted Budget and will be included in the FY 2019-20 budget request.

DISCUSSION:

On October 31, 2017, the Board approved ESAP Agreement Nos. 17-564, 565, 566, 567, 568, 569, 570, 571 and 572 with Allied Waste Services of North America, LLC, Granite Solid Waste, Inc., Mid Valley Disposal, LLC, Miramonte Sanitation, Inc., Orange Avenue Disposal, Inc., Peña's Disposal, Inc., Tule Trash Company, USA Waste of California, Inc., and Western Solid Waste, respectively.

On September 25, 2018, your Board directed Department of Public Works and Planning staff to return to your Board on today's date with the recommended amendments to the ESAP agreements implementing a recycling surcharge overlay to compensate identified ESAP haulers for increased processing costs as a result of negative recycling market conditions. Additionally, your Board also requested that the Department work on the issues of non-compliance within the NEWHA program.

ESAP

On October 2, 2018, Department staff met with the nine ESAP haulers to discuss and negotiate the proposed limited amendment to the ESAP Agreements, which incorporate language to address the current recycling market conditions. Seven of the haulers: Allied Waste Services, Granite Solid Waste, Mid Valley Disposal, Miramonte Sanitation, Orange Avenue Disposal, Peña's Disposal, and USA Waste of California have executed the recommended amendment to the ESAP Agreements and will be noticing their customers regarding the increase in collection fees due to the Recycling Surcharge overlay. Tule Trash Company chose not to participate because the area they serve is rocky and mountainous, and their customers are seasonal, which makes the provision of recycling service cost prohibitive. Western Solid Waste has elected to abstain from executing the amendment, and will refrain from imposing the surcharge on its customers, until the County and the ESAP haulers have established a successor process to the currently proposed recycling surcharge. The County scheduled the first of multiple meetings with the ESAP haulers on October 16, 2018 to develop a process that would tie the Recycling Surcharge overlay to appropriate market conditions comprised of various types of recyclable materials, as determined in negotiations between the County and ESAP haulers. The goal is to have a Recycling Surcharge overlay that will accurately address both positive and negative fluctuations in the market value of recyclables collected within the unincorporated areas of the County. It is anticipated that, at the earliest practicable date after the process has been cooperatively developed, the process will be presented to the Board of Supervisors for review and approval.

Other Jurisdictions

Department staff and the County's consultant, Abbe and Associates, have conducted a survey of the City of Fresno, counties, and solid waste authorities, to determine whether they have approved a recycling surcharge or rate increase for haulers as a result of increased recyclable processing costs. To date, neither the City of Fresno nor the counties surveyed have approved a rate increase or recycling surcharge. Two of the counties (San Joaquin and Tulare) are in negotiations with their haulers and may be considering a recycling surcharge. One County (Shasta) has approved a contamination charge, but not a recycling surcharge. In the other seven counties or authorities, the haulers have not requested, and the counties have not approved, a recycling surcharge or a rate increase. Below is the list of jurisdictions contacted:

Jurisdiction Review

Residential Recycling Surcharge or Extraordinary Rate Review

City of Fresno	No
Butte County	No
Merced County	No
Madera	No response to survey
Sacramento County	No

Salinas Valley Solid Waste Authority	No
San Benito County	No
San Joaquin County	Haulers have requested a surcharge; County has not approved
Santa Clara County	No
Santa Cruz County	No
Shasta County	No, Haulers have requested a surcharge; County approved a contamination charge
Tulare County	Haulers have requested a surcharge; County has not approved

NEWHA:

On December 5, 2017 and January 9, 2018, the Board conducted the first and second hearings to amend Title 8 - Health and Safety chapters that address or govern the management, collection and/or disposal of solid waste. Chapter 8.24 – Non-Exclusive Waste Hauler Agreement Program was added to provide additional regulation and oversight regarding solid waste handling services in roll-off boxes, compactors, trailers, or similar containers to improve the County's ability to track and quantify all waste generated within the unincorporated areas of the County, and allowing County to comply with California Green Building Standards Code.

On December 5, 2017, the Board also approved a NEWHA template agreement, which provided the mechanism to implement the NEWHA program and delegated authority to the Director of the Department, or designee, to execute on the County's behalf, the separate agreements based on that template, including successor agreements with Non-Exclusive Waste Haulers. As of October 12, 2018, Department staff has issued letters with copies of Chapter 8.24 of the County Ordinance to 77 businesses (listed in various publications), which are identified as engaging in the waste hauling business. These potential NEWHA haulers were asked to contact the Department - Resources Division to indicate if they meet exemption requirements or to execute the necessary documentation to ensure compliance with Chapter 8.24 of the County Ordinance. It is important to note that the 77 businesses contacted may include businesses that are no longer providing this type of service or businesses that self-haul as part of their commercial enterprise. Twenty-seven businesses have executed agreements with the County. Additionally, staff consulted with the City of Fresno, and they provided the County with a list of the 24 haulers who have signed agreements with the City, all of whom are included among the 27 haulers that have signed agreements with the County.

On October 2, 2018, Department staff met with 19 NEWHA haulers to address NEWHA hauling agreements and payment of fees, which included a lengthy discussion regarding the lack of participation by some of the noticed NEWHA haulers and their failure to comply with Chapter 8.24 of the County Ordinance. Some NEWHA haulers in attendance indicated that they are placed at a disadvantage because they have complied with the Ordinance and executed the agreements and therefore have to include the cost of the service and surcharge fees when charging their customers. Haulers present at the meeting indicated that they are losing customers to those haulers who have not executed NEWHA agreements, and who are able to provide the service for a lower cost. Department staff informed the haulers that today's recommended actions would include the request for to suspend fees for the period of July 1, 2018 through December 31, 2018 (third and fourth quarter 2018 submittals). The suspension would include the NEWHA program 10% service fee, the Solid Waste Management Program Activity fee of \$3.41 per ton, and where appropriate, the Southeast Regional Solid Waste fee of \$3.50 per ton, but would not affect the reporting requirements. Staff provided a list of current NEWHA haulers, which is also available on the County's web, and addressed the need to have current haulers assist in enforcement efforts by providing information on haulers who have not executed NEWHA agreements. The Department informed haulers that staff has identified six potential NEWHA haulers from the American Avenue Disposal Site records. Department staff also stated that local transfer station owners have volunteered to allow County staff to issue notices at their scale booths to those haulers who utilize their facility, but have not executed NEWHA agreements. Additionally, current NEWHA haulers were asked to contact the Department - Resources Division and provide the location, name, address, and/or

phone numbers if listed on containers. NEWHA haulers were informed that if the Board approved the suspension of fees all NEWHA haulers would be required to resume payment of all fees effective January 1, 2019, regardless of whether other haulers had executed NEWHA agreements. Staff anticipates scheduling two additional meetings prior to December 31, 2019.

In order to strengthen the County's enforcement of Chapter 8.24 of the County Ordinance, Department staff is requesting that your Board authorize the Department of Public Works and Planning to issue up to three documented warning notices to waste hauling businesses who are in violation of Chapter 8.24 at the American Avenue Disposal Site or any other waste processing facility gate located within Fresno County, prior to issuance of any administrative fines as provided for in Fresno County Ordinance Code, Title 1 - General Provisions, Chapter 1.13 - Administrative Fines.

REFERENCE MATERIAL:

BAI #12, September 25, 2018
BAI #11, June 5, 2018
BAI #8, February 6, 2018
BAI #10, December 5, 2017
BAI #10, October 31, 2017
BAI #37, February 28, 2017
BAI #7 and #8, January 31, 2017
BAI #6, November 15, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment I to Agreement No. 17-564 with Allied Waste Services of North America, LLC
On file with Clerk - Amendment I to Agreement No. 17-565 with Granite Solid Waste, Inc.
On file with Clerk - Amendment I to Agreement No. 17-566 with Mid Valley Disposal, LLC
On file with Clerk - Amendment I to Agreement No. 17-567 with Miramonte Sanitation, Inc.
On file with Clerk - Amendment I to Agreement No. 17-568 with Orange Avenue Disposal, Inc.
On file with Clerk - Amendment I to Agreement No. 17-569 with Peña's Disposal, Inc.
On file with Clerk - Amendment I to Agreement No. 17-571 with USA Waste of California, Inc.

CAO ANALYST:

Sonia M. De La Rosa