



CITY OF ELK GROVE

**ELK GROVE CITY COUNCIL
SPECIAL MEETING
AGENDA ITEM**

May 23, 2002

TO: Mayor and City Council

**FROM: Anthony Manzanetti – City Attorney
Constance Hornig – Special Counsel regarding Solid Waste**

SUBJECT: Action and/or Direction Regarding the City of Elk Grove Joining the Sacramento Regional County Solid Waste Authority (“SWA”) and/or Joining the Sacramento County/City of Citrus Heights Regional Agency for Integrated Waste Planning and Diversion Reporting (“Regional Agency”)

RECOMMENDATION:

- A. Staff recommends the City Council, in order to cost-effectively comply with AB 939, cause the City join both the SWA and the Regional Agency, if the City is able to obtain assurances that in five years the City has flexibility to withdraw from the SWA and enter into (exclusive) commercial collection contracts directly between the City and haulers.
- B. If the City is not able to secure those assurances, it is recommended that the City discuss the possibility of amending the SWA JPA agreement to allow for that flexibility.



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- C. If the City cannot secure amendments to give it desired flexibility to enter into its own commercial agreements at a future date, it should discuss joining only the Regional Agency.

 - D. If the County is unwilling to allow the City to join the Regional Agency without joining the SWA and availing the City of the SWA commercial diversion programs, staff should report back to the City Council and provide information regarding how the City could undertake both AB 939 planning, reporting and program implementation itself.

As a part of joining the SWA and Regional Agency, it is further recommended that the City take the following actions:

1. Obtain assurances that if the City withdraws from the SWA upon one year's notice, as allowed under the SWA Joint Powers Agreement ("**SWA JPA Agreement**"), then the City would not be bound by the provisions of the SWA's commercial franchise agreements and could enter into independent commercial collection contracts in the City, for rate regulatory, fee income, customer service, or other reasons. This could occur on an exclusive basis only following the expiration of the 5-year notice to haulers required by State law.

2. Obtain assurances that the City's ability to withdraw from the SWA is not constrained in fact or practice by liability for outstanding SWA debt. Alternatively, the City could request that any member be excused from liability for SWA debt if the member did not approve that debt. (Perhaps a different class of SWA membership could be created.)

3. Secure a City seat on the SWA's Technical Advisory Committee TAC;

4. Secure the right to serve as SWA chair when the chair rotates among County and City members (Sacramento County, Sacramento City,



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Citrus Heights and Elk Grove) in an amended 4-year cycle. An alternative would be to ensure that the City has the right to serve as chair of the SWA every 7th year by specifying that when the chair alternates from the County to a city, that it must switch to each city (Sacramento City, Citrus Heights or Elk Grove) in turn unless the city waives its right to sit in the chair.

5. Neither SWA nor its members regulate commercial collection rates on behalf of their commercial citizens. As SWA member, seek to add provisions to the form of SWA commercial collection agreement or regulation ensuring that commercial haulers' customer subscription orders are not automatically renewed on an "evergreen" basis, but rather can be terminated by a customer without long notice period (e.g. 30 days or less), in order to support a truly open, competitive market.

6. As a SWA member, strengthen the SWA's rights to terminate the commercial franchises.

7. Strengthen the SWA's rights to terminate the commercial franchises, especially deleting its automatic renewal (evergreen) provision;

8. As City, amend the City's solid waste ordinance to provide more detailed commercial customer service standards and rights than are provided in the SWA commercial franchises, as City license or permit requirements. The City may amend its solid waste ordinance independently of the SWA.

9. Give commercial haulers the statutory 5-year notice.; and

10. The City should study whether the present SWA commercial franchise fee rebate provides the City with adequate compensation for infrastructure impacts (wear and tear on roads) and solid waste program administration (permit enforcement), and consider other municipal solid waste ("**MSW**") impact and program administration fees.



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BACKGROUND:

The City has retained Constance Hornig, as its special legal consultant regarding solid waste issues, and asked her for a recommendation on whether the City of Elk Grove should join the Sacramento Regional County Solid Waste Authority ("**SWA**"). The City also asked the related question of, should the City also join the Sacramento County/City of Citrus Heights Regional Agency for Integrated Waste Planning and Diversion Reporting ("**Regional Agency**")?

SUMMARY ANSWER

In order to cost-effectively comply with AB 939, it is recommended that the City join both the SWA and the Regional Agency, if the City is able to obtain assurances that in five years the City has flexibility to withdraw from the SWA and enter into (exclusive) commercial collection contracts directly between the City and haulers. If the City is not able to secure those assurances, it is recommended that the City discuss the possibility of amending the SWA JPA agreement, described below, to allow for that flexibility.

SUMMARY RECOMMENDATIONS

The SWA administers a commercial waste diversion program for the County and Cities of Sacramento and Citrus Heights that is generally described in The Source Reduction and Recycling Element for the for the Unincorporated Area of the County, as amended, (the "**SRRE**") approved by the California Integrated Waste Management Board ("**CIWMB**").

The Regional Agency provides diversion planning and reporting services to the County and City of Citrus Heights. It could also provide those services to the City, which was formerly part of the unincorporated area covered in the SRRE. The Regional Agency reported diversion of 50.3% to the CIWMB for 2000. If approved by the CIWMB, it appears that



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the County and the City of Citrus Heights (and the City, as member of the Regional Agency) will be in compliance with the 50% diversion requirements of the California Integrated Waste Management Act ("AB 939").

The full analysis and explanation for the recommendations is found in the attached memorandum from Ms. Hornig.

FINANCIAL IMPLICATIONS:

Franchise fee revenues. Presently, the SWA collects a franchise fee of 8% on commercial haulers' gross receipts. The franchise fee funds:

- ◆ regional costs (including house hold hazardous waste programs and fixed landfill costs),
- ◆ SWA administration, and
- ◆ re-distribution back to the members.

If the City determines not to join the SWA and to develop its own commercial collection program, it will incur additional costs that it might fund through implementation of its own franchise fee. It is not clear at this time what commercial haulers' gross receipts in the City aggregate, how much money 8% (or any other percent) of those receipts would raise, or whether those fees would cover commercial program and /or AB 939 compliance costs estimated below.

However, note that the SWA is requesting an administrative budget next year of \$380,000. Although the City would not incur that level of cost if it implemented its own commercial programs, neither would it incur allocable costs proportionate to its population, since the SWA costs reflect economies of scale. But neither would the City be funding an allocable share of the regional costs.



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1. Joining Regional Agency only. If the City joins only the Regional Agency and not the SWA, the City would have to develop a commercial collection / diversion program and fund its ongoing administration and enforcement costs. In addition to staff time, costs might include one time, up front legal / waste consultant fees to draft solid waste ordinance amendments establishing permit terms and conditions, and ideally corollary non-exclusive franchise agreements for ease of enforcement. Terms and conditions would include prescription of the collection / diversion services, reporting requirements, and (dis)incentives for meeting customer service and diversion standards. In practice, the City would have to meet and confer with affected haulers to craft a mutually agreeable program.

- ◆ **Commercial program development (*one-time cost*).** Depending on the amount of hauler colloquy and re-drafting, development fees could aggregate as much as \$25,000 - \$30,000.
- ◆ **Diversion report monitoring (*annual cost*).** Reviewing monthly reports for diversion numbers and following up with questions, might require 15 - 20 hours of time in house (or perhaps \$2,000 to \$3,000 solid waste consultant's).
- ◆ **Contract administration (*annual cost*).** Additional contract administration, including complaint resolution, might require another 40 hours of staff time, or more if there were performance problems. However, commercial franchise agreements could provide for cost reimbursement of time spent over a specified number of hours in the aggregate or on a specific complaint.
- ◆ **Household hazardous waste services (*annual cost*).** Based on the City of Sacramento's proposal to provide household hazardous waste services to the City's residents (\$70/car, based on 420 users), the City would incur approximately \$30,000 / year.



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2. Joining neither Regional Agency nor SWA. If the City does not join the SWA or the Regional Agency, in addition to incurring commercial program development and administration costs, the City would incur AB 939 program development and reporting costs:

- ◆ **Waste generation study / establishing base year (*one time cost*).** Although it is possible that the City could use or adapt the existing waste generation study originally done for the County SRRE, the CIWMB may be skeptical that the numbers are too old and not presently reliable. It is also possible that the County may be willing to share its waste diversion model to establish a base line for AB 939 diversion calculations. Costs might run \$5,000.
- ◆ However, if the City must commission a new generation study, the costs would be significantly greater, beginning from perhaps \$20,000 to many tens of thousands, depending on the protocol and number of random sampling done. The City might anticipate approximately \$25,000.
- ◆ A final cost caveat: there has been great regulatory uncertainty with respect to waste diversion accounting, and some cities have been ordered by the CIWMB to re-do their studies, so there is a chance that this is not a one-time cost..
- ◆ **Drafting SRRE (*one-time cost*).** The CIWMB has worked hard to develop forms to enable local governments to draft their requisite reports relatively easily. The City might do this in-house with staff for 60 - 80 hours of work.
- ◆ **First annual report (*one-time cost*).** Reporting can be done electronically, but the first year the City files it might hire a knowledgeable consultant to help train City staff to review disposal data and assumptions used as basis for diversion reporting. Assuming that new waste characterization study establishes a solid base year for

Staff Report



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diversion reporting purposes, City staff might spend 40 hours on this report and the consultants fees might total \$3,500.

- ◆ **Second annual report (*one-time cost*).** The second year, City staff might again spend 40 hours, but consultant's help might be less, maybe \$1,500.
- ◆ **Annual report (*annual cost*).** Thereafter, City staff could prepare the annual reports and just call upon outside expertise during the course of the year for help in responding to CIWMB information requests or clarifications, maybe \$1,000/year."