



Agenda Date: 2/8/2021

Agenda Placement: 6C

Upper Valley Waste Management Agency Board Agenda Letter

TO: Board of Directors

FROM: Steven Lederer - Manager
Upper Valley Waste Management Agency

REPORT BY: Gary Bell, Agency Counsel -

SUBJECT: Amendment to JPA Formation Agreement

RECOMMENDATION

AMENDMENT TO JPA FORMATION AGREEMENT

DISCUSSION AND REQUESTED ACTION: Agency Manager requests discussion and adoption of Resolution 21-01 approving the 5th amendment to Napa County Agreement number 3265 (Upper Valley Waste Management Agency Joint Powers Agreement).

EXECUTIVE SUMMARY

The Agency's operations and powers are governed by the JPA Formation Agreement. The Agency is authorized to enter into franchises for solid waste handling services and to establish, among other things, fees in connection with those services. (JPA Formation Agreement, § 6.1, subds. (a) & (b).) The Integrated Waste Management Act also authorizes the Agency to grant franchises "under the terms and conditions prescribed by the governing body of the local government agency by resolution or ordinance." (Pub. Resources Code, § 40059, subd. (a)(2).) The Agency's members include the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville. Its operations are governed by state law and the Joint Powers Agreement between the members.

This amendment (see attached) would amend the Joint Powers Agreement to: (1) distribute franchise fees to members according to members' pro rata share of gross receipts collected by the franchisee, and (2) authorize the Agency to implement state organic waste recycling mandates such as those imposed by AB 341, AB 1826, and SB 1383. Franchise fees are a charge on the franchisee (the contractor) by the franchisor (the Agency), contained in the franchise agreement and based on the value of the franchise conveyed, the use of public infrastructure, and other lawful measurements. (Jacks v. City of Santa Barbara (2017) 3. Cal.5th 248, 270; Pub. Resources Code, §§ 40059, 47109.)

This amendment will not become effective until approved by each of the member's governing bodies. A draft staff report is attached to this agenda item which the members might find useful in presenting this item to their governing bodies. It is hoped that each member can accomplish this task by mid April as the new agreement becomes effective on July 1.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed: There is no fiscal impact associated with this agenda item as it is simply implementing a process for distribution of Franchise fees. The fees themselves are set by contract.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable. To the extent this is a project under CEQA, it is exempt under 14 California Code of Regulations 15061(b)(3).

BACKGROUND AND DISCUSSION

County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville are members of the Upper Valley Waste Management Agency, a joint powers agency organized and operating under the Joint Exercise of Powers Act (Government Code section 6500 et seq.). Its operations are governed by state law and the Joint Powers Agreement between the members. Section 9.1 of the Joint Powers Agreement states:

Amendments to this Agreement shall be made only with the consent of all existing MEMBERS at the time of the amendment without regard to voting power; any such consent shall be in the form of duly authorized resolutions of the MEMBERS' respective governing bodies.

This amendment would amend the Joint Powers Agreement to: (1) distribute franchise fees to members according to members' pro rata share of gross receipts collected by the franchisee, and (2) authorize the Agency to implement state organic waste recycling mandates such as those imposed by AB 341, AB 1826, and SB 1383.

The Amended and Restated Franchise Agreement with Upper Valley Disposal Service

On October 19, 2020, the Agency entered into an Amended and Restated Franchise Agreement with Upper Valley Disposal Service for recyclables, organics, construction and demolition debris and solid waste collection services. Among many other things, the agreement requires the franchisee to pay franchise fees and an AB 939/Statutory fee for the Agency's operations. The new franchise fees are phased in as follows: 2.5% of gross receipts in fiscal year 2021-2022, 6% of gross receipts in fiscal year 2022-2023, and 10% of gross receipts in fiscal year 2023-2024 and for each fiscal year thereafter.

Under the current Joint Powers Agreement, Members of the Agency may request that the Agency collect franchise fees on their behalf. The City of Calistoga is currently the only Member with such an arrangement. This Resolution amends Section 6.5 to the Joint

Powers Agreement to remove this procedure, while ensuring prior commitments regarding franchise fees are met, and would instead provide:

Distribution of Franchise Fees. If the AGENCY imposes a franchise fee on a FRANCHISE for SOLID WASTE HANDLING SERVICES, the franchise fee shall be distributed to MEMBERS, within 120 days of the AGENCY's receipt thereof, based on each MEMBER's pro rata share of the FRANCHISE's gross receipts collected within that MEMBER's jurisdiction. For example, if the FRANCHISE receives twenty percent (20%) of its gross receipts from a MEMBER's jurisdiction, that MEMBER shall receive twenty percent (20%) of any franchise fees received by the AGENCY. Notwithstanding the foregoing, if a MEMBER is receiving a franchise fee as of October 19, 2020, that MEMBER shall continue to receive franchise fees under this Section equal to the amount otherwise due until the amount distributed hereunder equals or exceeds such amount; thereafter, such MEMBER shall receive distributions hereunder in the same manner as other MEMBERS.

This Resolution also amends Section 7.2 of the Joint Powers Agreement to explicitly authorize the Agency to use fees and charges to fund its operations including, for example, an AB 939/Statutory fee. While other provisions of the Joint Powers Agreement grant this authority, Section 7.2 would do so explicitly in the same section governing other funding mechanisms for the Agency.

Mandatory Organics Recycling

SB 1383 was signed by the Governor in late 2016 and regulations implementing its provisions were finalized in late 2020. The bill, as approved, sets specific targets for reducing the amount of organic waste in landfills as follows:

- 50% reduction from 2014 levels by 2020
- 75% reduction from 2014 levels by 2025

The bill also sets a goal of recovering 20% of edible food for human consumption by 2025. The bill authorizes CalRecycle to adopt regulations to achieve these targets, including those mentioned above. The regulations take effect on January 1, 2022, two years after the 2020 goal. In addition, the bill authorizes local jurisdictions to charge fees to recover the costs incurred in complying with the regulations. Local jurisdictions must monitor compliance with organic waste disposal requirements, inspect waste containers, and contact violators for failing to sort waste. Beginning in 2024, local jurisdictions may impose penalties on individuals or businesses that contaminate waste bins with the incorrect waste. Local jurisdictions must also provide education and outreach to organic waste generators.

The bill also requires local jurisdictions to adopt enforceable ordinances or mechanisms by Jan. 1, 2022 and establish an enforcement program that requires commercial and residential organic waste generators to comply with organic waste requirements. If a violation occurs between Jan. 1, 2022 and Dec. 31, 2023,

jurisdictions must provide violators with educational materials. If a violation occurs after Jan. 1, 2024, jurisdictions may take enforcement action against the violator.

This Resolution amends Section 6.1 of the Joint Powers Agreement to add subsection (s). The amendment grants the Agency the authority to enter into franchises to assist with implementation and enforcement of state organic waste recycling mandates under AB 341, AB 1826, and SB 1383. It further grants it authority to enter into franchises for the procurement of recovered organic waste products and enter into Memorandums of Understanding with Members to impose and enforce penalties on generators of organic waste for noncompliance with recycling and collection mandates under SB 1383. Alternatively or concurrently, the amendment allows the Agency to impose and enforce penalties on generators of organic waste for noncompliance with recycling and collection mandates under SB 1383 in all parts of the Service Area. The Agency anticipates future Memoranda of Understanding with each Member to define and clarify the responsibilities of the Agency and Members regarding implementation of AB 1383 and related laws. This amendment provides the groundwork for the Agency's authority and discussions with Members to ensure compliance with the new law.

SUPPORTING DOCUMENTS

- A . Resolution #21-01, 5th Amend to JPA Agreement
- B . Sample Staff Report for Jurisdictions

Recommendation: Approve
Reviewed By: Steven Lederer