



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
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First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

December 1, 2008

To: Supervisor Don Knabe, Chair
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

ALTERNATIVES TO LANDFILLING FEE FOR SUNSHINE CANYON LANDFILL

On November 25, 2008, the Board directed the Chief Executive Officer, County Counsel and the Departments of Public Works and Regional Planning to review the proposed Alternatives to Landfilling fee proposed by the City of Los Angeles and to report back on December 2, 2008 with the legal, financial and equity issues raised by the proposed fee with a recommended policy position for the Board of Supervisors to communicate to the City Council and Mayor of the City of Los Angeles.

Background

Under the County Replacement Conditional Use Permit (RCUP) for the Sunshine Canyon Landfill, adopted by the County Board of Supervisors on February 6, 2007, Condition 64 required the approval and execution of a revenue allocation agreement between Browning Ferris Industries (BFI), (operator of Sunshine Canyon Landfill), the City and the County. The County of Los Angeles has been working with the City and BFI, in good faith, to develop a Revenue Allocation Memorandum of Understanding (MOU). The MOU was signed by BFI on November 4, 2008; the County Board of Supervisors approved the MOU on November 12, 2008; and the City of Los Angeles, City Council approved the MOU on November 25, 2008.

On November 26, 2008, a representative of the Chief Executive Office along with staff from the offices of Supervisor Yaroslavsky and Supervisor Antonovich as well as representatives of County Counsel and the Department of Public Works met with City staff, including a representative of Councilman Smith's office, the City Attorney, the

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Chief Legislative Analyst and the Bureau of Sanitation, to discuss the Alternatives to Landfilling Fee. The City confirmed that the City Council will hold a noticed hearing to consider an ordinance establishing the fee on December 9, 2008. City staff also emphasized that the approval of the fee is tied to the City's approval of Phase II, the combined City-County Sunshine Canyon Landfill. Although County representatives communicated the CEO's significant issues, as noted below, with the proposed fee, it is our considered opinion that there is little likelihood that the City will withdraw or alter the fee proposal.

Alternatives to Landfilling (ATL) Fee

Based on the City's Bureau of Sanitation Report, dated January 11, 2008, the Bureau is proposing the ATL fee for the purposes of:

- 1) Supporting alternative methods for municipal solid waste management and reuse, including but not limited to, research and process/facility evaluation; site acquisition; facility design, development and construction; and educational outreach; and
- 2) Supporting existing, new and expanded recycling related programs and activities of the Bureau of Sanitation and to purchase or pay for personnel, equipment, materials and services in support of such programs and activities; and
- 3) Paying tipping fees due to the Sunshine Canyon Landfill that are attributed to refuse hauled by the Bureau of Sanitation.

Objections to the ATL Fee

Concerns and objections to the ATL Fee and Ordinance are detailed below:

- In terms of the tipping fees, as detailed in Table C of the Bureau of Sanitation Board Report and as discussed between County and City staff, it is our understanding that the City believes that the proposed ATL fee would provide a means to equalize the fees imposed by the RCUP. Under the MOU, the RCUP fees, which total about \$2.98 per ton, will be charged to 30 percent of all the refuse accepted at the Landfill. If spread uniformly to all the Landfill users, which we understand BFI intends to do, the RCUP fees will total approximately \$0.90 per ton. The proposed \$3.00 ATL fee would apply to 70 percent of the refuse and would, therefore, amount to about \$2.10 per ton if spread uniformly to all

Landfill users. This is a very large increase in the tipping fee, much larger than the RCUP fees.

- The Bureau of Sanitation Board Report makes it clear that the ATL fee would be used in part to reimburse the City of Los Angeles for its payment of the fee as well as to reimburse the City for its payment of the County's RCUP fees. The effect of this reimbursement is that all users of the Landfill except the City of Los Angeles would be paying both the ATL fee and the RCUP fees. In other words, after the reimbursement, the money remaining and available for alternative methods of solid waste management and recycling would be money paid entirely by the non-City users of the Landfill. The ATL fee the City paid would be paid back to the City and not used for those other purposes. Additionally, the RCUP fees that the City paid would be reimbursed to the City out of the money paid by the non-City users toward the ATL fee. Table E in the Report shows that in some cases, most of the ATL fee would be used to reimburse the City for the fees it paid, and not much would be available for its stated "alternatives to landfilling" purposes.
- The Sunshine Canyon Landfill is a regional facility that serves all cities in the County including the City of Los Angeles. As such, the County RCUP fees, which consist of eight separate, limited-use fees, were established primarily to support Countywide or regional programs, fund additional mitigation measures, and provide other benefits for the community surrounding the Landfill, which is predominately within the City of Los Angeles. It is, therefore, entirely appropriate for the City to pay the RCUP fees equally with the non-City users of the Landfill.

In contrast, it would not be legal for the City of Los Angeles to adopt a fee that has the effect that only the non-City users of the Landfill will pay for the RCUP fees and for the part of the ATL fee left over after reimbursements to the City. Indeed, it appears that even the portion of the ATL fee that would be left after the City is reimbursed for its fee may be limited to uses that benefit only the City and not the other users of the Landfill. For example, it is not clear whether supporting "alternative methods for municipal refuse disposal" means that only facilities providing alternative methods for disposing of City of Los Angeles refuse would be funded by this fee.

Therefore, the Chief Executive Office could not support a fee that offsets the tipping fee for the City of Los Angeles at the expense of the unincorporated areas and the other cities within the County's jurisdiction. These entities will derive no direct benefit from the imposed City fees.

- The proposed ATL fee would be imposed upon the Sunshine Canyon Landfill unilaterally and not as a condition of a land use or other City approval. The legal authority for the City of Los Angeles to impose this fee as proposed has not been provided. By proceeding in this manner, the City is ignoring the requirements of Proposition 218. In addition, the manner in which the fee is imposed is unfair and unreasonable, and the amount of the fee is excessive and tantamount to an illegal tax.

Recommendation

The Chief Executive Office, after consultation with County Counsel and the Departments of Public Works and Regional Planning, is recommending that the attached letter be signed and sent to the City Council and Mayor of the City of Los Angeles outlining the County's concerns and objections to the ATL fee as detailed above.

WTF:LS
DSP:BK:ib

Attachment

- c: Executive Officer, Board of Supervisors
 County Counsel
 Director and Health Officer, Public Health
 Director, Public Works
 Director, Regional Planning



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December 1, 2008

DRAFT

Mr. Raymond P. Cirama
Interim City Administrative Officer
City of Los Angeles
200 North Spring Street, Room 475
Los Angeles, CA 90012

Dear Mr. Cirama:

ALTERNATIVES TO LANDFILLING FEE FOR SUNSHINE CANYON LANDFILL

On behalf of the Los Angeles County Board of Supervisors, I am writing to advise you of the Board's opposition to the proposed ordinance establishing an Alternatives to Landfilling (ATL) Fee for the Sunshine Canyon Landfill Operations that will be heard by the Los Angeles City Council on December 9, 2008.

On November 21, 2008, the City Attorney provided the County the draft ordinance to implement the ATL fee. In reviewing the proposed recommendations, the County has several critical concerns and objections to the City's proposed establishment of the ATL.

Background

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Mr. Raymond P. Cirama
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The Board of Supervisors respectfully requests that the Council either reject or delay action on the establishment of the ATL fee until further discussions can be arranged with the Chief Executive Office to resolve the above critical issues and concerns. If you have any questions regarding this matter, please feel free to contact me or your staff may contact Dorothea Park at (213) 974-4283.

Sincerely,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:LS:
DSP:BK:ib

c: All Board Offices
County Counsel
Director and Health Officer, Public Health
Director, Public Works
Director, Regional Planning
Chief Legislative Analyst, City of Los Angeles
City Attorney, City of Los Angeles
Director, Bureau of Sanitation, City of Los Angeles