

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Staff Presentation Worksheet

Presentation Date: 10/25/11 Time: 2:00 pm Length: 30 minutes
Presentation Title: Application for a Joint Franchise for Solid Waste Collection
Department: DTD – Office of Sustainability
Presenters: Carla Scheafer, Chair Solid Waste Commission; Warren Jones, Solid Waste Commission; Scott Ciecko, Rick Winterhalter,

POLICY QUESTION

Will the Board accept the recommendation of the Solid Waste Commission and issue an order denying the application by Stericycle for a Joint Franchise for the collection of solid waste, specifically infectious waste, within an area where an exclusive franchise currently exists?

ISSUE & BACKGROUND

ORS 459A.085 provides that, in order to ensure reliable and affordable collection of solid waste, counties may “displace competition with a system of regulated [integrated solid waste] collection service by issuing franchises which may be exclusive if service areas are allocated.” The 1989 Legislature added ORS 459.386-400, requiring local governments to regulate the collection and disposal of infectious wastes including medical waste and “sharps.” Section 10.03.230 of the Clackamas County Code provides that when the Board issues a franchise for the collection of solid waste it “shall” be exclusive unless the Board finds the applicant is unable to provide “adequate” service within the particular collection area.

On March 14, 2002, the Board granted Waste Management of Oregon, Inc. (WM) the exclusive solid waste collection franchise for the collection area known as the John P. Lehl (70-20-C) area. This area includes the Kaiser Permanente Sunnyside Medical Center. Pursuant to Section 10.03.260A(3), WM has subcontracted with BioMed of Oregon, Inc. (BioMed) to provide the collection of infectious waste from customers within their franchise including the Kaiser facility.

Recently, WM notified the County of the termination of their subcontract with BioMed. Following this termination, on or about October 1, 2011, WM assumed the infectious solid waste collection responsibilities within their franchise areas. WM continues to hold an exclusive solid waste collection franchise in good standing and there is no evidence indicating WM cannot adequately provide for the collection of infectious solid waste.

Waste Management’s termination of the BioMed contract has prompted Stericycle to submit an application for a Joint Services Franchise pursuant to Chapter 10.03.230 of the code. Stericycle’s application is solely for the collection of sharps from one customer (Kaiser) within the John P. Lehl franchise held by WM.

Section 10.03.230 of the Clackamas County Code provides that, “[i]f the holder of a Collection Service Franchise is unable to provide service for particular types ... of solid waste..., the Board may issue a temporary or permanent [Joint] Collection Service Franchise to another person for the purpose of providing limited service...” Thus, a condition precedent to the issuance of a joint collection service franchise is a finding that an existing exclusive franchise holder cannot provide adequate collection services of a particular type of solid waste.

In the present case the particular type of solid waste at issue in Stericycle’s joint franchise application is infectious solid waste, specifically sharps collection, from the Kaiser Sunnyside facility. In order for Stericycle to be granted a joint franchise, there must be some indication that WM cannot adequately provide for the collection of that waste from Kaiser facility.

On September 28, 2011, the Solid Waste Commission held a public hearing on Stericycle’s joint franchise application. At that hearing, Stericycle appeared and provided testimony and argument that the joint franchise should be granted. Stericycle’s presentation focused on the idea that the exclusive franchise system is outdated and that customers should be allowed to choose their service providers. Stericycle failed to provide evidence that WM is unable to provide adequate service. In addition, representatives from WM were also present at the meeting and offered testimony that they are in fact able to provide for the collection of infectious solid waste, including sharps, and would begin doing so on October 1, 2011.

After considering all testimony and argument at the hearing, the Solid Waste Commission determined that no evidence existed indicating that WM, the current holder of the exclusive collection service franchise, is unable to provide the Kaiser facility with adequate collection and disposal of infectious solid waste. As a result the Commission unanimously voted to recommend denial of the application. A report from the Solid Waste Commission summarizing their recommendation is attached to this worksheet as Exhibit 1.

Also present at the September 28th Solid Waste Commission hearing were staff from the Clackamas County Office of Sustainability and from the Office of County Counsel. These staff members reviewed applicable State and local law and considered all testimony and written materials offered by the interested parties. Following Solid Waste Commission hearing this study session was scheduled to provide information and recommendations to the Board on whether to grant or deny Stericycle’s joint franchise application.

QUESTION(S) PRESENTED FOR CONSIDERATION

Whether the Board will grant or deny Stericycle’s application for a joint franchise for infectious solid waste collection services at the Kaiser Sunnyside Medical Center which is located within WM’s existing exclusive franchise area.

OPTIONS AVAILABLE

Issue an order denying the application for a Joint Services Franchise submitted by Stericycle.

Issue an order approving the application for a Joint Services Franchise submitted by Stericycle.

RECOMMENDATIONS

Staff recommends that the Board issue an order denying Stericycle's joint franchise application due to the lack of any evidence indicating that the current exclusive franchise holder is unable to provide adequate collection services of infectious solid waste. Stericycle's arguments that the current franchise system should be amended and that customers should be entitled to a choice of collection service providers, fail to address the threshold question provided in the County Code, to wit: whether the existing franchise holder is providing adequate services to all of its customers. This recommendation by staff is consistent with the recommendation of the Solid Waste Commission as discussed above and further expressed in Exhibit 1 attached hereto.

SUBMITTED BY:

Division Director/Head Approval *Susan A. Ziolkowski*

Department Director/Head Approval *Paul Gilman*

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Rick Winterhalter @ 503-742-4466