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Agenda Items: ID#19-11554 (11:00 A.M.)

Date: 11/14/2019

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CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Additional Information

Agenda Related Item(s) – ID#19-11554 (11:00 A.M.)

Item(s)

***BILL NO. B-43 - (Intro. 11/7/2019) (For adoption) - Adding Section 2-319 to the Fresno Municipal Code, relating to confidentiality of closed session attorney-client privileged communications. (Subject to Mayor's veto)

Contents: Letter in Opposition

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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November 11, 2019

Fresno City Council
2600 Fresno Street
Fresno, CA 93721

RE: November 14, 2019 Council Meeting – Item ID 19-11554 Bill 43

Dear Council Members -

I am writing to urge a NO vote on Item ID 19-11554, adding Section 2-319 of the Fresno Municipal Code, relating to confidentiality of closed session attorney-client privileged communications.

I believe adding this section would be completely inappropriate until a section is added prohibiting Elected Officials and City Management Staff from misleading or lying to the Public or to any City Labor Organizations.

I have attached 3 documents that illustrate why Council should address the issue of misinformation that comes from City Hall BEFORE addressing the issue of leaked information. The City has a long history of using misinformation or outright lies to advance an agenda. That practice was evident when the City tried to privatize the Residential Solid Waste Department in 2012-2013.

The City continued to use the threat of fiscal emergency and bankruptcy as justification for privatization even though they had received a legal memo in June 2012 advising that they had a low probability of defending a fiscal emergency declaration. The memo also outlined recommendations to help during a fiscal crisis that the City never implemented.

The memo from the Meyers Nave Law Office was sent anonymously to City Labor Organizations because someone recognized that it was wrong to use misinformation to advance the RSW privatization plan. The individual that leaked that memo would not have been protected as a Whistleblower.

City Council voted to privatize Residential Solid Waste on December 20, 2012. As the President of the Fresno City Employees Association (FCEA), I sent an email to FCEA Members on December 26, 2012, advising them of the vote, that we had launched a petition drive to stop privatization, and letting them know that the City was not going to bounce checks or have trouble meeting payroll. On December 31, 2012, then City Manager Mark Scott sent a letter that accused me of making untrue, misleading,

speculative, and one-sided statements. I was not intimidated by Mr. Scott's letter, and responded to his inaccurate claims on January 3, 2013. At the bottom of page 3 of my letter, I pointed out that the city was quick to offer up the information from the credit reporting agencies but had not shared any of the information included in the June memo from the Meyers Nave Law Office regarding the low probability of the City being able to defend a fiscal emergency declaration and that they had still not implemented most of their recommendations. The City was continuing to conduct business as usual.

On January 7, 2013, I received a hand-delivered memo from the City Attorney's Office demanding the return of all copies of the Meyers Nave document. The City Attorney's memo was meant to intimidate and prevent the sharing of information that would expose the city's use of misinformation.

Although I understand the need to keep some items confidential, I believe the City has a poor track record when it comes to honesty and transparency and has frequently used the cover of closed session to mislead the public about important issues they had a right to know about. City Management has also used closed sessions to mislead Council Members, especially regarding Labor Relations and negotiations.

Unless a provision is added to ensure that City Staff and Elected Officials are prohibited from using lies or misinformation to advance an agenda, the proposed addition is merely an attempt to intimidate and prevent Council Members from questioning or confirming the truth of information presented in closed session.

Sincerely,

Dee Barnes
3730 Kenmore Dr N
Fresno, CA 93703
(559) 779-1981
dee.barnes@comcast.net

Enclosures: 12/31/2012 Mark Scott letter (including 12/26/12 Barnes email)
1/3/2013 Response to Scott letter
1/7/2013 City Attorney Memo



Mark Scott
City Manager

December 31, 2012

Fresno City Employees Association
c/o Dee Barnes, President
2607 Fresno Street, Suite D
Fresno, CA 93721

Re: Response to Claims about Residential Solid Waste Franchise

Dear Dee:

I am writing to address what I consider to be irresponsible statements you continue to make concerning the Residential Solid Waste (RSW) franchise decision. Most recently, I take issue with the series of claims you are making on behalf of the Fresno City Employees Association in emails promoting the petition drive to stop implementation of the franchise. In the e-mails you are circulating, there are a number of assertions that are either untrue, misleading, speculative, and/or one-sided. It is unfair to the public and to our employees for these inaccurate claims to go unchallenged. Accordingly, this letter responds. I ask that you share this letter with your membership, and I intend to circulate this letter to community groups and others you have contacted with your emails.

I have attached your recent email as reference, and I have highlighted each of the claims I wish to address. Those claims correspond to the paragraphs below.

In the first paragraph of your email you state that many in our community are upset with the decision to franchise and are committed to stopping the privatization through a petition. I understand that is the perspective of FCEA and the other labor groups who represent employees impacted by the franchise. However, I want to reiterate the City's position and why we believe the franchise is the right decision for our community and even for the long-term welfare of our employee workforce.

City of Fresno
City Hall • 2600 Fresno Street • Fresno, California 93721-3601
(559) 621-7770 • FAX (559) 621-7776 • www.fresno.gov

The City's decision to enter into a franchise agreement with successful bidder Mid Valley Disposal achieves the following:

- Reduces residential trash rates by 17.6% effective March, 2013. While it provides for modest cost-of-living indexed increases starting in the third year, the increases are capped at a level lower than experienced in the City operation over the last 10 years.
- Offers continued employment for each of the City employees displaced by the franchise agreement for a minimum of one-year. We have every expectation that they will remain employed beyond the first year assuming they continue to provide good service.
- Maintains or enhances the level of services currently provided by the City. For example, the popular Operation Clean-up service will continue, and Mid Valley will begin to offer organics recycling beginning in 2014, a service the City does not offer.
- Provides the City with an annual net gain of \$2.5 million in franchise fees for each of the next nine years, plus a one-time start-up revenue to the City of \$1.5 million.

In your second paragraph, you reference the petition drive being spearheaded by the labor unions representing Solid Waste employees and explain that, if successful, the petition for referendum will delay implementation of the franchise agreement and put the decision out to a public vote. This is a costly, fiscally unwise strategy. It is accurate to say that enough signatures collected would delay its implementation and potentially stop the franchise if approved by the voters. However, it is important to note that the immediate consequence of delaying the franchise is the City's loss of more than \$200,000 per month in franchise revenue for up to 4 to 6 months or even more, depending on the date of the election. Additionally, The Fresno Bee is reporting that the City's administrative cost for such a special election would run between \$600,000 to \$1,000,000. At this time, the City has no margin for error when it comes to meeting this year's budget plan, which assumes franchise revenue effective March 2013. I provide further comments at the end of this letter related to the City's current fiscal hardships and the tough decisions we face.

In your third paragraph, you say we have "threatened" more cuts if the franchise does not go through, and then you assert that MORE cuts would happen IF the franchise is implemented. Your latter assertion is false and completely without merit. Unfortunately, it IS true that if the franchise does not move forward, the City would have trouble meeting payroll by the end of this fiscal year. This is not a "threat." It is our obligation to inform the public and our workforce of that truth. I have repeatedly stated that the City will not have sufficient revenues to pay for services by the end of this year unless additional revenues are collected (such as the franchise fee) or immediate, severe position cuts are made with related impacts on public health and safety. Notwithstanding some potential for modest revenue growth in the future, our financial condition is tenuous and fragile at best. My statements are supported by numerous financial institutions which have analyzed our fiscal position. They have also said that additional unplanned borrowing to balance our budget is not fiscally acceptable. The continued downgrading of the City's credit standing has a real and direct cost to the public and threatens our solvency. The

back-up data and analysis supporting these statements can be found in the numerous financial sources that are itemized at the end of this letter.

Furthermore, the City Council adopted a Fiscal Sustainability Plan (FSP) in March of 2012, which was recommended by the Administration and which identified the proactive steps the City of Fresno must take to avoid the insolvency that is being experienced in other hard-hit regions. The FSP establishes certain basic principles for managing the City's financial business. Among the principles is the rather obvious statement that expenditures must match the City's revenues. We have to make realistic choices that address the root causes of our fiscal shortfall. The City is looking at the Residential Solid Waste franchise as an acceptable revenue source because we can simultaneously lower trash rates AND maintain service levels AND offer jobs to ALL employees who are displaced. No other budgetary option gives us such a positive outcome.

On the expenditure side of the ledger, every conceivable Budget Reserve Fund has been exhausted in Fresno. For several years now, the City has been running negative fund balances in excess of \$20 million. As you know, we have already cut 25% of all City positions over the last 3 years, including 33% of the City's General Fund (i.e., discretionary, non-Enterprise Fund resources). Even in Public Safety, we have cut service levels and staffing to the point we now consider it to be a health and safety problem to cut much further.

As we have repeatedly pointed out, 81% of the entire General Fund is allocated for employee compensation. And, 10% of the remainder is debt service, which cannot be cut. The remaining 9% is for operating expenses, such as vehicle fuel, self-insurance and utility costs. Thus, if we cut expenditures further, we will necessarily have to take major additional cuts to Public Safety services AND to other employees who will NOT have the re-employment opportunities offered by the Solid Waste franchise agreement. None of the City's options are entirely desirable, but the Residential Solid Waste franchise option is by far the best overall option.

Also in your third paragraph, you state the Mayor and Fresno City Council have NOT adequately analyzed the true impact on other City Funds and Departments. This statement is entirely untrue. In fact, the Administration and the City Council have thoroughly analyzed and documented the direct and indirect costs charged to the solid waste operation and what happens to those costs with the implementation of the franchise. In February 2012, that analysis was presented to the Fresno City Council by HFH Consulting and can be found on page 13 of the feasibility study conducted prior to initiating the competitive bid for the franchise. FCEA fails to acknowledge that this analysis has been conducted. The analysis indicates that the majority of the inter-departmental charges are "direct costs" that go away when the franchise is implemented. However, some overhead costs continue to be incurred after the solid waste operations are privatized. Those overhead costs have been accounted for in the pro forma analysis of the

franchise, which explains why the gross franchise fee of more than \$4 million, is discounted to a net revenue gain of \$2.5 million in our budget assumptions.

In your email, you further predict that the City will end up losing any and all revenue from the franchise fees because several people in the community want to change the City's charter to forbid the collection of franchise fees. This seems to be a very circular argument. It seems to say that the City should not pursue the franchise agreement because it might be found to be illegal or a future ballot measure might overturn it by a vote of the public. I offer the following in response to this circular and speculative argument:

- Adoption of a solid waste franchise is entirely legal and not at all unusual. The City Attorney's Office has issued this opinion from the beginning of our analysis, pointing out that the California Constitution provides for the creation of franchises and has for more than 100 years. As a result, these franchise agreements are common in many cities in California. In fact, private collection of solid waste is THE most common method of service delivery in California cities – both large and small.
- The City Attorney's Office has also done research related to the effects of an initiative that would amend the City's Charter and eliminate the authority of the City to impose franchise fees. Although we believe there are strong arguments that such a broad based initiative would have difficulty in prevailing over a legal challenge by the City, we also believe that such an initiative would have little effect on current existing franchise agreements, such as the Residential Solid Waste franchise. Such an initiative, we believe, would be an unconstitutional impairment of contract as to existing agreements and therefore unenforceable.

In your email, you include an attachment (included here for reference) that purports to compare rates among representative privately operated solid waste services and other publicly operated services. The residential trash rate comparison you use is intentionally misleading. You show these comparisons under the heading "The Facts Don't Lie." However, all 10 of the examples of "higher private rates" are taken from the San Francisco Bay Area where landfill shortages are so severe that agencies must charge high trash fees to incentivize programs for recycling and reduced trash streams. Even some of the "public owned" comparisons are unfair because the agencies cited offer a mixture of public and private operators with comparable rates. The bottom line for Fresno ratepayers is that the adopted franchise agreement will provide a 17.6% immediate reduction to rates, and future increases are capped at rates that are lower than historic increases over the last 10 years of City operation. It simply is not true that trash rates in Fresno will rise precipitously under this contract.

Lastly, I wish to address your statements that the City is misrepresenting and overstating its financial crisis. Frankly, this is the most irresponsible assertion in FCEA's email and in your repeated public statements on this subject. No one has to take my word for it when it comes to assessing the City's fiscal health. Instead, you can read for yourself what the following agencies have written about the City's financial condition after evaluating our finances. These reports are all consistent with the conclusions in the Fiscal Sustainability Plan and with my cautions about our ability to retain solvency through the end of this fiscal year unless the budget plan is adhered to.

The following agencies have issued reports that are available for public review:

- Various independent credit rating agency reports by Fitch Ratings, Moody's and Standard & Poor's, relating to their evaluations of Fresno's credit worthiness. The City has been repeatedly downgraded in multiple evaluations by these firms in 2011 and 2012. Fitch Ratings, for instance, lists Fresno as third from the bottom among the 40 California cities it rates ("California Cities Snapshot," September 19, 2012).
- Macias, Gini & O'Connell, LLP – "The 2011 Comprehensive Annual Financial Report (CAFR)" of the City of Fresno. This latest audit report provides multiple disclosures relating to our negative fund balances and the City's stated intentions to address them positively.
- Management Partners, various reports issued by this independent consulting firm, retained by the City of Fresno to evaluate cashflow concerns, 2012:
 - Cashflow Analysis & Public Presentations, April 12 and May 31, 2012
 - Fresno Transit Financial Assessment, August 22, 2012
 - Review & Analysis of Compensated Absences, June 5, 2012
- Harvey M. Rose Associates, LLC, "Analysis of City of Fresno Funds," prepared for the Fresno City Council as an independent review of revenue and expenditure opportunities in the City's various funds, issued January, 2012.

Credit rating agencies continue to express concern, documented in the above reports, that the City of Fresno will fail to make the hard decisions necessary to avoid insolvency. The Residential Solid Waste franchise, while not the only hard choice, is one of the key elements responsive to the Fiscal Sustainability Plan. As you know, the City is also pursuing efforts to reduce employee compensation levels in ways that will match the local labor market, while still providing fair compensation to our deserving employee population. All of these choices are unpleasant at their core, but they remain absolutely necessary.

This is the reality that we face. I wish that these were not our circumstances, but they are. Making statements (without any factual information to back them up) that the Administration is somehow fabricating this fiscal crisis is nothing but a distraction. The time and energy we spend

responding to these factually inaccurate statements is taking time away from addressing our root financial problems at City Hall and from working with our community to do things that improve our local economy.

If the FCEA wishes to continue with these misleading and untrue statements, the Administration will continue to respond. However, we strongly recommend that our dialogue with the FCEA be focused on solutions and getting through the remainder of this fiscal crisis with as little impact to service levels and to our employees' compensation as possible.

I am always open to productive and constructive dialogue with FCEA. Let me know if you are interested, and we will promptly set up those meetings with your Executive Board.

Sincerely,



Mark Scott
City Manager

From: Dee Barnes [<mailto:dee.barnes.fcea@comcast.net><<mailto:dee.barnes.fcea@comcast.net>>]

Sent: Wednesday, December 26, 2012 12:00 PM

To: undisclosed-recipients:

Subject: Extremely Urgent & Important - PLEASE READ

Everyone may have heard by now that the Fresno City Council voted 4 – 3 to privatize Residential Solid Waste. Many in our community are upset with the decision and are committed to stopping the privatization by helping to secure enough signatures to force the Fresno Council to either repeal their decision or hold a special election for the citizens.

If there are enough valid signatures collected during the 30 days following the passage of a new ordinance, the Fresno City Council, by law, will be forced to either repeal the ordinance to franchise residential solid waste or they will need to allow the citizens to vote on the issue.

It is extremely important every Fresno resident assist in some way during the next 3 weeks.

Some of you may have mixed feelings about this issue because the Mayor and City Manager have threatened the public with additional cuts to service and the possibility of not being able to make payroll. The city is not going to bounce any checks, but there might be additional cuts. However, I believe there will definitely be more cuts if trash is privatized. The Mayor and Fresno City Council have NOT adequately analyzed the true impact on other City Departments when they lose the \$13.6 million that Solid Waste transfers for services provided to them. There will be further impacts and possibly ADDITIONAL service cuts and layoffs in other city departments.

Everyone should also be aware of the very real possibility that the City will end up losing any revenue from franchise fees even if the privatization happens. I have been contacted by several people that plan to launch a petition drive for a municipal initiative that would forbid the city from collecting franchise fees on trash collection and limit the amount that could be charged for contract management. The City has been using the figure of \$2 - \$2.5 million in franchise fees; however that is the net amount that would benefit the general fund. The actual amount of franchise fees for residential service will be over \$4 million, plus whatever they receive from commercial. Many people, including some of those that argued for privatization, would rather see all of that money in the pockets of residents and businesses than in the City's general fund. That means that residents could end up with a private for-profit trash company and the city without any franchise fees for the general fund. Initiative petitions are allowed to gather signatures for 6 months and at least one person involved in that effort believes they will have a lower signature requirement because of Prop 218. I do not believe they will have any trouble securing enough signatures for an initiative and believe the voters of Fresno would certainly vote to ban franchise fees on trash. Remember water meters?

See attached copy of the actual petition and the instruction sheet that you can print from your home computer. Hard copies of the petition and voter registration forms can be picked up at the FCEA Office and the Local 39 Office. Information can also be found at

[www.FresnoTrashScam.info](http://www.fresnotrashscam.info)<<http://www.fresnotrashscam.info>>

Please feel free to forward this email to friends, family, neighbors, co-workers, and anyone else that might be interested.

There are enough people in our community that are fed up with the bad decisions being made by City Hall. Please help us get the ordinance repealed because the alternative is to end up with privatized trash service and less revenue for the general fund. The watchdog report on the front page of the 12/23/12 Fresno Bee regarding HUD's claim that Fresno has wasted millions will make many citizens even more determined to put an initiative on the ballot to do away with franchise fees and prevent the city from using trash money for general fund mistakes.

Please contact me if you have any questions, suggestions, or want to help.

Dee Barnes

(559) 621-2057<<tel:%28559%29%20621-2057>> work

(559) 779-1981<<tel:%28559%29%20779-1981>> cell

Side by side comparison. The facts don't lie

Public Owned Trash Utility	Monthly Rate
Anaheim	19.53
Bakersfield	25.60
Clovis	33.32
Fresno	25.37
Long Beach	23.17
Los Angeles	41.32
Sacramento	36.97
Santa Barbara	37.01
Tulare	20.30
Visalia	27.85

**Fact: NO PROFIT
= LOWER RATES**

Private For Profit Trash Company	Monthly Rate
Castro Valley	76.45
Daly City	73.00
Oakland	96.19
Palo Alto	101.76
Redwood City	78.70
San Francisco	82.65
San Jose	94.20
San Mateo	60.54
San Ramon	69.20
Union City	83.74

**Fact: PRIVATE FOR PROFIT
= HIGHER RATES**

Fresno City Employees Association, Inc.

2607 FRESNO STREET, STE D
FRESNO, CALIFORNIA 93721 • (559) 268-7767
fcea@sbcglobal.net • www.fcea.net



January 3, 2013

City Manager Mark Scott
City of Fresno
2600 Fresno Street
Fresno, CA 93721

RE: Response to Allegations of Misleading Statements about RSW Franchise

Dear Mark:

I am writing to address what I consider to be unfounded allegations and the rather intimidating tone in your December 31, 2012, letter. We do not agree on the decision to franchise residential solid waste, but I do not believe any of my statements are irresponsible, misleading or untrue.

I respect your commitment to our City and understand how difficult it must be to successfully manage the finances of Fresno during the current economic climate. I have never claimed that the City is misrepresenting or overstating its financial crisis. As an Accounting Technician, I understand governmental accounting and the shortage we face in the General Fund. I did state that the city is not going to bounce any checks; and will stand by that remark unless the City is able to provide documentation that we do not have balances in the reserve funds sufficient to cover general fund operating expenses.

Your letter makes it obvious that the City is still trying to deceive the public into believing this is just a labor issue and we are only trying to protect city jobs. I understand that may be your perspective, but it is simply not true. This fight is not just about protecting city jobs; it is about what is best for our community. The effort to fight the privatization of residential solid waste may have started with employees, but only because we understood the true impact to our community and had knowledge of what the city was planning. Many city employees will see a change to their trash service and have the right to be heard as citizens. They do not lose their voice just because they work for the city.

I believe the majority of Fresno residents would be against the residential solid waste franchise if they had all of the facts and truly understood the impact. You have accused me of making statements that are speculative and one-sided; yet four Council Members made a decision that impacts the residents of this city forever based on information that has been prepared and filtered through City Staff, a consulting firm that has benefited from this process, and the private company that stands to gain a significant long term financial reward. This certainly would not be the first time that Politicians have made a decision with disastrous results. Many employees and citizens are involved in this fight because they have seen similar stories over the years. The downtown stadium, parking garage, Metropolitan Museum, and Granite Park come to mind. We know that the City started looking at the option to privatize trash service long before the formal process started or the information was shared with the public. Many of the claims being made

by the politicians and City Management have lost credibility since this entire process has lacked transparency and the opportunity to engage in open dialogue and debate. Most of the planning was done in secrecy behind closed doors and then the actual process was rushed through before the public had time to react and before 2 of the yes votes left the City Council.

I have attached your letter as reference for the claims I will address.

At the top of the second page you provide information about the contract with Mid Valley Disposal that I consider to be misleading and incomplete. Mid Valley does plan to reduce rates by 17.6% in March 2013 and they have agreed to cap increases at a level lower than the City increases over the past ten years. However you did not mention the fact that the City's own Utility Advisory Committee recommended a 15% decrease in rates (3% per year for 5 years) or that Mid Valley can always ask that the rates in the contract be renegotiated. Why didn't the City lower rates in July 2011 or July 2012? We believe the City was already planning to privatize and use the lower rate argument for justification. That belief is reinforced by the fact that the City signed a \$44,000 consulting contract for a feasibility study on the RSW Franchise in November 2011, before Commercial Solid Waste was even turned over to the private companies. I would also like to point out that labor groups were told more than once that the City did not plan to privatize residential services and disciplinary action was taken against the employee that shared a copy of the consulting agreement that should have been openly posted with all the other agreements on the City Clerk's web page.

There is no incentive for the City to keep rates low since they will receive a flat 15% franchise fee on the rates paid by the customer. They will benefit every time the rates go up since there is no cap. You point out that the contract provides for "modest cost-of-living indexed increases starting in January 2015 that are capped at a lower level than City increases over the last ten years." However you failed to mention any of the factors related to the past city increases; such as bond payments, being overcharged by the County for tipping fees, new equipment, years without increases to rates, or the UAC recommendation to lower rates by 15%.

I understand that Mid Valley will offer employment to displaced city workers, but at significantly reduced wages and benefits. Loyal long term experienced workers will also see a negative impact to retirement benefits since they will no longer be contributing to the city retirement fund and will most likely have reduced benefits due to Social Security's Windfall Elimination Provision. It should also be noted that Allied Waste just laid off 6 former city solid waste drivers due to the loss of their Madera contract.

Mid Valley may be offering to maintain the current level of service based on this franchise agreement, but there is no guarantee how long that will last or if it will even continue through the life of this contract. We have asked for documentation from the consultants that would provide statistics on prices, levels of service, and community satisfaction for communities that switched from a municipal trash service to private companies. Once the City is completely out of the trash business and unable to provide the service, they will have no leverage and the private company will have no incentive to keep the same level of service without extra fees. I have never said that private companies could not provide good trash service. I just believe that rates will go up every year starting in 2015, will end up being much higher than municipal rates, and that Mid Valley will most likely start charging for extra services. I have also

pointed out that we could end up with homes that do not have trash service because they cannot afford the fees. I do not believe the City will have the resources to monitor or enforce those situations and we could end up with public health issues.

The citizens should also be asking what type of efficiencies and route changes Mid Valley will be making that allows them to offer rates so much lower than the City and the other 3 companies that responded to the RSW Franchise RFP. The City should be able to reduce current rates by significantly more than the 15% UAC recommendation by implementing such effective cost cutting measures.

I agree with the statement regarding the signing fee of \$1.5 million. However I believe using the figure of \$2 - \$2.5 million as an annual net gain is misleading to the public and somewhat speculative regarding the unproven impact of losing the inter-departmental transfers from Solid Waste. When questioned about that issue, Public Utilities Director Patrick Wiemiller admitted at the District 3 Community Meeting that there could be additional cuts to services and personnel for other departments. It should be made clear to the public that the city will actually be receiving over \$4 million per year in franchise fees from their trash rates.

The petition drive is being conducted by individual citizens, various political and community organizations, city employees, and labor groups throughout the city. This decision affects all residents and many in our community are against privatization. The politicians and city staff are responsible for the current situation and the possibility of having to either repeal the franchise ordinance or spend money on a special election. I do not know how long the Mayor was considering the residential franchise, but Council became aware of the possibility on December 1, 2011, when I forwarded them a copy of the consulting agreement for a feasibility study. They had plenty of time to engage the citizens of Fresno and explore other options. I find it extremely disappointing that Council Members Lee Brand and Andreas Borgeas were willing to spend Council District funds, which are general fund, to place Measure F on the November ballot, but were unwilling to allow the citizens a vote on this issue or any other options. Measure F was a complete waste of money since the actual charter amendment language did not mandate the recommended changes that were approved at the June 28, 2012, Council Meeting. The amendment requires the Council to establish policies that are already in place and did not specify any of the percentages, amounts, or super majority requirements reflected in the June Council vote. The citizens should also be angry that Members Brand and Borgeas wanted to establish super majority votes for several issues, but believe a simple majority of a very split Council is sufficient for a decision that affects all residents and cannot be reversed.

As the City Manager, you do have the responsibility to inform the public and city workforce of the financial condition and the need to make cuts. However, we disagree on what information should be shared and the best course for our City. The city is quick to offer up the information from the credit reporting agencies but has not shared any of the information included in the June memo from the Meyers Nave Law Office. I received a copy of the leaked memo from an anonymous source and know the city had a low probability of defending a fiscal emergency declaration in June and has still not implemented most of their recommendations. In fact, it appears that politicians and management are conducting business as usual.

I am fully aware of the deficit in the general fund. However, many citizens, employees, and three

Council Members do not believe residential solid waste should be used to generate general fund revenue. The projected revenue from solid waste franchise fees will not be enough to solve the deficit and general fund expenses should be covered by legitimate fees for service and tax revenue. You have admitted that Fresno does not have the long term financial obligations facing cities like Stockton and that we are facing a relatively short term cash flow problem.

I believe that with a true open, honest, and transparent partnership between the politicians, city staff, employees, and citizens we could find ways other than privatization that would get us through the next few years. However, a partnership will not work as long as the city refuses to be transparent and continues to disregard solutions and suggestions made by employees and labor leaders. You may be correct that "no other budgetary option gives us such a positive outcome." However, politicians and staff should be doing what is best for the future of our city, not taking the "easy" road of selling off city services. If that is the best answer, why not look at selling Woodward Park.

You claim my statement regarding the true impact on other city departments is "entirely untrue" and that City Council and the Administration has thoroughly analyzed and documented direct and indirect costs and that HF&H Consulting presented the analysis in February. I agree that HF&H presented an analysis in their feasibility study and have acknowledged that continued general fund expenses is accounted for in the \$2.5 million net revenue gain. However, I believe the analysis is speculative and one-sided. I might be more inclined to take the information at face value and we might not be facing some of the current challenges if Council and the Administration actually had a good track record with analyzing direct and indirect costs. The City is not being honest with the residents about the very real possibility that water and sewer rates could be impacted with the loss of almost \$1 million to the Utilities, Billing, & Collection Department.

You refer to my statements regarding the possible loss of franchise revenue as a "very circular argument." First of all, I was only speaking to the issue of trash franchise fees. The City has the legal right to privatize just about any city service. However, if challenged the city may find out that franchise fees on trash service are not legal. In-lieu fees were considered legal until they were successfully challenged in court and the city was required to issue refunds. If the city was so sure that the current franchise contract would survive any legal challenges, why was an indemnification clause added with language referencing Prop 218? The language is significantly different than the language in the commercial franchise agreement and could have something to do with the successful legal challenge in Montebello, California, and the judge's decision to invalidate their 15-year franchise contract.

There is at least one resident that plans to start an initiative to forbid the city from collecting franchise fees on trash service. I am very surprised to hear that the City Attorney's Office would claim that the City would prevail in a legal challenge over a charter amendment prohibiting franchise fees on trash collection. There are several references in the actual franchise agreement regarding "future judicial interpretations of current law or new laws, regulations, or judicial interpretations." I believe this individual would be able to gather the required signatures for a charter amendment initiative and that the citizens of Fresno would vote to prohibit franchise fees and lower their trash rates. In my opinion, the decision made by four City Council Members already violates the will of the people. Fresno Charter Section 1218 states, "No municipally owned utility shall be operated for the benefit of other municipal functions nor be used directly or indirectly as a general revenue-producing agency for the City," and

Response to Mark Scott RSW Letter
January 1, 2013
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Section 1224, "The city shall not tax any person for using any utility service, ..." I have not yet heard a convincing explanation as to why the city is unable to use any of the current trash fees for other city services, but the money can be used as long as it goes through the pockets of a private trash hauler. Fifteen percent (15%) of the fees paid by the residents to Mid Valley Disposal for trash service will be forwarded to the City of Fresno in the form of franchise fees. Even the majority of the City Council has admitted that there is no real difference between a franchise fee and a tax.

I am sorry that you believe the chart with rate comparison was misleading. We would appreciate receiving any documentation that would provide the time period and rate changes for communities that switched from municipal service to private haulers. Based on our research and the personal stories we have heard, the rates are always higher, they will constantly increase, and most charge for special handling or extra services.

I wish to state once again that I have not denied the general fund deficit or the challenges facing the City of Fresno. If I did not believe the city was facing financial challenges, I would not have encouraged FCEA Members to overwhelmingly approve a 3% salary reduction in August 2011 on top of the 2% furlough deduction that started in January 2010. The Fresno City Employees Association and other Labor Groups have continued to offer suggestions regarding ways to save money and generate new or increased revenue. We are dedicated public servants that care about our community. Most labor groups have made concessions even though we had little to no input on the decisions that created the City's financial crisis. We all want the City to attain financial health and long term sustainability.

There are many complex issues facing our city and I am pretty sure that our letters did not cover everything. I am including two documents that were prepared for a meeting with Council Member Clint Olivier just before the final vote. Some of the information has already been included in this letter, but they document most of the reasons why the Council should have either voted no on December 20th or postponed the decision.

I am also open to productive and constructive dialogue and it has always been my desire to partner with the City in an effort to serve the citizens of Fresno. However, I do not believe the residential solid waste franchise is a good decision and plan to continue working to educate the citizens of Fresno and secure the required number of signatures for a referendum.

Sincerely,

Dee Barnes
FCEA President
(559)779-1981 cell

Enclosures



Francine M. Kanne
Interim City Attorney

January 7, 2013

PERSONAL & CONFIDENTIAL / HAND DELIVERED

Dee Barnes
2326 Fresno Street
Fresno, CA 93721

Re: Meyers Nave Attorney-Client Communication dated 6/12/12

Dear Ms. Barnes:

Our Office is in receipt of your January 3, 2013, correspondence to City Manager Mark Scott entitled "Response to Allegations of Misleading Statements About RSW Franchise." On Page 3 of your letter, we note you reference receiving a June 2012, memo from Meyers Nave Law Office related to an Attorney-Client privileged communication to the City Council, Mayor and City Manager regarding their consideration of a Declaration of Fiscal Emergency. You clearly indicate in your letter that you knowingly received "leaked" information.

The only letter received from Meyers Nave in June of 2012, was a letter dated June 12, 2012, addressed to the City Council, Mayor Ashley Swearengin and City Manager Mark Scott. That memo was clearly identified as an Attorney-Client privileged communication. Meyers Nave drafted that memo as special counsel for the City of Fresno, hired by and through our Office as the attorneys for the City. That memo was not for distribution beyond those City addressees within the memorandum and was not subject to dissemination to the public or for general public information.

Demand is hereby made for the return of the subject memorandum, along with any copies that you have in your possession within 24 hours of receipt of this correspondence. Additionally, you are directed to destroy any and all copies not returned to our Office, whether in digital format or otherwise. Finally, you are not entitled to use or reference the subject memorandum for any purpose, including but not limited to, court proceedings or public hearings of any type.

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PERSONAL & CONFIDENTIAL / HAND DELIVERED

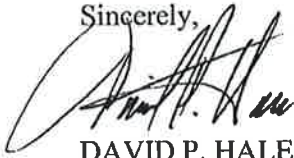
Dee Barnes RE: Meyers Nave Attorney-Client Communication dated 6/12/12

January 7, 2013

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If the subject memorandum or any other Attorney-Client privileged document you may have from Meyers Nave is not immediately returned to our Office within 24 hours of receipt of this letter, we will exercise any and all rights and remedies that we have to ensure the return of the subject memorandum. If you should have any questions related to this, please feel free to contact me at the address and phone number below.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Hale", written over a light blue horizontal line.

DAVID P. HALE

Chief Assistant City Attorney

DPH:pn [60727pn/DPH] 01-07-13