

File No. 130133

Committee Item No. 4
Board Item No. 3

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee Date 04/17/2013

Board of Supervisors Meeting

Date May 7, 2013

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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Completed by: Victor Young Date April 12, 2013

Completed by: Victor Young Date 4/18/13

[Administrative Code - Public Health Solid Waste Penalties Fund]

Ordinance amending the Administrative Code, by adding Section 10.100-217, to establish a fund for the deposit of civil penalties assessed by the Department of Public Health and paid by operators of solid waste facilities for violation of solid waste disposal laws; and making environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are *strike-through italics Times New Roman*. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 130133 and is incorporated herein by reference.

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 10.100-217, to read as follows:

SEC. 10.100-217. PUBLIC HEALTH SOLID WASTE PENALTIES FUND.

(a) Establishment and Use of Fund. The Public Health Solid Waste Penalties Fund is established as a category eight fund to receive civil penalties from the operators of solid waste facilities as required by California Public Resources Code Section 45010.

(b) Use of Fund. The monies are to be used exclusively for enhancing solid waste enforcement, including, but not limited to, all of the following:

(1) Increasing enforcement programs;

(2) Expanding the agency's enforcement capabilities;

1 (3) Bringing the solid waste facilities into compliance with state and local law; and,

2 (4) Remediating illegal or abandoned solid waste disposal sites.

3 (c) Administration of the Fund. The Director of Health shall approve all expenditures from
4 this fund.

5 (d) In 2013 and 2014, before the Board of Supervisors considers the proposed budget
6 for the Department of Public Health for Fiscal Year 2013-14 and Fiscal Year 2014-15, the
7 Department shall submit to the Board of Supervisors a report stating the Public Health Solid
8 Waste Penalties Fund balance, accrued interest, and amounts and description of all deposits
9 to and expenditures from the Fund in the previous year.

10 Section 3. Effective Date. This ordinance shall become effective 30 days from the
11 date of passage.

12 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
13 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
14 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
15 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
16 and Board amendment deletions in accordance with the "Note" that appears under the official
17 title of the legislation.

18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: 
21 JON GIVNER
22 Deputy City Attorney

23 n:\health\as2012\1200380\00841614.doc

<p>Item 4 File 13-0133</p>	<p>Department: Department of Public Health (DPH)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the City’s Administrative Code by adding Section 10.100-217 to create a Public Health Solid Waste Penalties Fund for the deposit of civil penalties assessed by the Department of Public Health (DPH) and paid by operators of solid waste facilities for violation of solid waste disposal laws.

Key Points

- DPH is authorized by the State to permit and inspect solid waste facilities and abandoned landfills to ensure that all facilities are in compliance with State and City regulations. California Code authorizes DPH, through DPH’s Solid Waste Program, to impose a civil penalty on solid waste facility operators if they are in violation of State and City standards.
- California Public Resources Code, Section 45010 requires that DPH deposit solid waste penalties into a separate fund, which is not currently the practice. Creating a separate Public Health Solid Waste Penalties Fund would bring DPH into compliance with State law.
- DPH plans to use the Public Health Solid Waste Penalties Fund for (a) investigations of solid waste facilities that are operating without a permit and investigations of illegally dumping garbage; (b) investigations of permitted solid waste facilities in the event that the operators of the facilities do not respond to warnings; (c) legal services of the City Attorney’s Office and any related legal documents needed to pursue a violator; and (d) cleaning the waste disposal sites that have been abandoned.
- The proposed Public Health Solid Waste Penalties Fund would be established as a Category Eight fund which allows for automatic appropriation, the accumulation of interest, and the carry forward of any fund balance. All expenditures from the proposed Public Health Solid Waste Penalties Fund would require approval from the Director of Health, but would not be subject to Board of Supervisors appropriation approval.

Fiscal Impact

- Since 2002, DPH’s Solid Waste Program has collected a total of \$374,989 from civil penalties paid by solid waste facility operators that were in violation of California Codes, of which none has been expended due to accounting and administrative oversight errors.
- DPH has incurred expenditures of less than \$3,000 from 2008 through 2012 for City Attorney solid waste enforcement activities that should have been paid by solid waste penalties but were instead paid by General Fund monies.

Recommendations

- Amend the proposed ordinance to request that DPH submit a written annual report to the Board of Supervisors during the annual budget process for FY 2013-14 and FY 2014-15 that contains the proposed Public Health Solid Waste Penalties Fund balance, accrued interest, and amounts and descriptions of all deposits and expenditures to ensure the funds are used in accordance with California Public Resources Code, Section 45010.
- Approve the proposed ordinance as amended.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Charter Section 2.105 provides that legislative acts by ordinance be subject to approval by the Board of Supervisors.

In accordance with Administrative Code Section 10.100-1, category eight funds (a) are automatically appropriated for expenditures consistent with the purpose of the fund, (b) accumulate interest provided that the balance in the fund exceeds \$50,000, and (c) allow carry forward of any unexpended and unencumbered balance at the end of the fiscal year to the following fiscal year.

Background

The San Francisco Department of Public Health (DPH) is the local enforcement agency for the California Integrated Waste Management Board whose responsibility is to protect the public's health through the management of California's solid waste. DPH's Environmental Health Division administers a Solid Waste Program that is authorized to issue permits and inspect solid waste facilities¹ and abandoned landfills to ensure that all facilities are in compliance with State and City regulations. Section 45010 of the California Public Resources Code authorizes DPH to impose civil penalties on solid waste facility operators if they are in violation of the standards set forth in Title 14 and 27 of the California Code of Regulations.

There are currently seven permitted solid waste facilities in the City and County of San Francisco and two closed disposal sites that DPH's Solid Waste Program routinely inspects.

Mr. Henry Louie, DPH's Solid Waste Facilities Program Senior Inspector, stated that penalties have been imposed on the solid waste facility operators because the solid waste facility operators were operating without a permit.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the City's Administrative Code by adding Section 10.100-217 to create a Public Health Solid Waste Penalties Fund for the Department of Public Health (DPH) to deposit civil penalties that are imposed on solid waste facility operators for violating State and City solid waste disposal laws. The proposed Public Health Solid Waste Penalties Fund would be established as a Category Eight fund which allows for automatic appropriation, the accumulation of interest, and the carry forward of any fund balance.

¹ According to California Public Resource Code, Division 30, Chapter 2, Section 40200, solid waste facilities are "facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation."

Under the ordinance, the proposed Public Health Solid Waste Penalties Fund would receive all civil penalties imposed on solid waste facility operators that are in violation of State and City solid waste disposal laws. California Public Resources Code, Section 45010 prohibits penalty monies collected through the imposition of civil penalties to be deposited into the City's General Fund and instead requires that the civil penalty revenues be deposited into a separate fund, which is currently not the practice.

Currently, penalties from solid waste violations are deposited into three different accounts which were established to collect administrative, civil and criminal penalties. Because a separate fund has not been created to collect civil penalties, DPH has been out of compliance with the California Public Resources Code, Section 45010 since 1995. In order to comply with the California Public Resources Code, Section 45010, the proposed ordinance would consolidate penalties collected as a result of solid waste violations into one, separate fund, the Public Health Solid Waste Penalties Fund. This Fund would provide for more accurate record keeping for how penalties from solid waste violations are expended.

In accordance with California Public Resources Code, Section 45010, the proposed ordinance restricts the expenditures from the Public Health Solid Waste Penalties Fund to activities that enhance solid waste enforcement, including:

- 1) increasing enforcement programs;
- 2) expanding the agency's enforcement capabilities;
- 3) bringing solid waste facilities into compliance with State and local law; and
- 4) remediating illegal or abandoned solid waste disposal sites.

According to Mr. Louie, DPH's Solid Waste Program plans to use penalty proceeds deposited in the proposed Public Health Solid Waste Penalties Fund for (a) investigations of solid waste facilities that are operating without a permit and investigations of illegally dumping garbage; (b) investigations of permitted solid waste facilities in the event that the operators of the facilities do not respond to warnings; (c) legal services of the City Attorney's Office and any related legal documents needed to pursue a violator; and (d) cleaning the waste disposal sites that have been abandoned.

Pursuant to the proposed ordinance, all expenditures from the proposed Public Health Solid Waste Penalties Fund would require approval from the Director of Health. Such expenditures would not be subject to Board of Supervisors appropriation approval because the fund proceeds under a Category Eight Special Fund are automatically appropriated.

FISCAL IMPACT

The Department of Public Health's Solid Waste Program has collected \$374,989 from civil penalties paid by solid waste facility operators that were in violation of Title 14 and 27 of the California Code of Regulations as shown in Table 1 below. Mr. Rizzolo, the Environmental Health Division's Operations Manager, stated that none of the previous penalties collected have been expended to date due to accounting and administrative oversight errors.

Table 1
Solid Waste Enforcement Deposits from Solid Waste Violators

Date	Company Name	Penalty Amount
November 2, 2002	Advanced Waste	\$1,500
February 24, 2003	Advanced Waste	1,500
March 5, 2003	Advanced Waste	1,000
May 1, 2003	Advanced Waste	1,250
2003*	Ace Hauling	4,000
January 12, 2004	Advanced Waste	1,500
February 5, 2008	City Debris	354,239***
January 1, 2012- October 28, 2012**	Smart Demolition	10,000
	Total	\$374,989

*The exact date is unknown.

** Four installments of \$2,500 each were made over this time period.

***City Debris was operating a solid waste facility without a permit and was in violation of various State and City standards pertaining to solid waste management. DPH took numerous enforcement actions against the owner and operator to secure compliance dating as far back as September 11, 1995. City Debris continually ignored DPH's call for compliance. DPH eventually sued City Debris in Superior Court resulting in a settlement agreement in which DPH was awarded \$354,239.

Mr. Louie noted that the amount of civil penalties that are imposed on a violator is at the discretion of DPH and is based on (1) the severity of the violation, (2) consultation with the City Attorney, (3) the costs involved investigating the violator, and (4) negotiations between DPH and the violator's attorney. The California Public Resources Code, Section 45023 does, however, restrict civil penalties to an amount not-to-exceed \$10,000 for each day the violation occurs.

Mr. Rizzolo estimates that DPH has incurred expenditures of less than \$3,000 from 2008 through 2012 for work order services provided by the City Attorney for solid waste enforcement activities that should have been paid by solid waste penalties but were instead paid by General Fund monies previously appropriated by the Board of Supervisors for DPH's Environmental Health Division's operating budget.

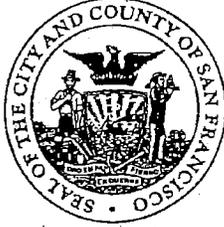
The Budget and Legislative Analyst recommends amending the proposed ordinance to request that DPH submit a written annual report to the Board of Supervisors during the annual budget process for FY 2013-14 and FY 2014-15 that contains the Public Health Solid Waste Penalties Fund balance, accrued interest, and amounts and descriptions of all deposits and expenditures to ensure that the accumulated balance of fund proceeds are used in accordance with California Public Resources Code, Section 45010.

RECOMMENDATIONS

Amend the proposed ordinance to request that DPH submit a written annual report to the Board of Supervisors during the annual budget process for FY 2013-14 and FY 2014-15 that contains the proposed Public Health Solid Waste Penalties Fund balance, accrued interest, and amounts and descriptions of all deposits and expenditures.

Approve the proposed ordinance as amended.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Planning Department
Environmental Review Officer

FROM: Angela Calvillo, Clerk of the Board *by v m*

DATE: February 20, 2013

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors Budget and Finance Committee has received the following, which is being referred to the Planning Department for determination as to whether the proposed legislation will impact the environment.

Please provide your findings within 10 days from the date of referral.

File: 130133

Administrative Code - Public Health Solid Waste Penalties Fund

Please return this cover sheet with the Commission's response to Victor Young, Clerk, Budget and Finance Committee.

C: Nannie Turrell, Major Environmental Analysis
Monica Pereira, Environmental Analysis
Joy Navarrete, Environmental Analysis

RESPONSE FROM PLANNING DEPARTMENT - Date: *February 21, 2013*

No Comment
 Recommendation Attached

Nannie Turrell for
Bill Wycko, Environmental Review Officer

*State Long Exemption, CCA Guidelines,
Section 15273, Rates, Tolls,
Fees and Charges.*

Referral - Fees