



**DATE:** June 23, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Enter into Exclusive Negotiations with Waste Management of Alameda County to Extend the Solid Waste and Recycling Franchise Agreement

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the City Manager to enter into a period of exclusive negotiations with Waste Management of Alameda County, the City's current solid waste, recycling materials, and organics service franchisee.

### **SUMMARY**

The City holds a franchise agreement with Waste Management of Alameda County (WMAC) to provide solid waste, recycling, and organic materials collection, and processing services. The current agreement commenced March 1, 2015 and is scheduled to expire March 1, 2022. The agreement includes the option to extend for three, 12-month periods. If the City opted to extend the contract the maximum numbers of times, the agreement would expire March 1, 2025. This report presents considerations and options regarding the City's decision to either enter into exclusive negotiations with WMAC or prepare and release a request for proposals (RFP). This report also provides a list of advantages and disadvantages associated with extending the current agreement or releasing an RFP, as well as suggested services and performance requirements that may be included in the next solid waste franchise agreement.

At the March 9, 2020<sup>1</sup> Council Sustainability Committee meeting, the Committee discussed possible approaches to the new solid waste franchise agreement, and recommended the City start exclusive negotiations with WMAC. The Committee also expressed a desire for the City to partner with Hayward schools, if possible so that solid waste services would be consistent throughout Hayward. The Committee also directed staff to be innovative and sustainability-minded in negotiations.

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<sup>1</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=4389835&GUID=EFF0E6BA-0F1F-4CA3-B275-1B18D86FF2EE&Options=&Search=>

## **BACKGROUND**

WMAC has been the City's solid waste and recycling services franchisee since at least the mid-1970s. WMAC provided the service under a different business name initially (Oakland Scavenger Company) and has, in the past thirty years, subcontracted with Tri-CED Community Recycling for residential recycling services.

The City has wide discretion with respect to awarding franchises. The City Charter, Sec. 1503, allows for non-competitive negotiations with a single provider if Council determines that it is in the City's best interests. Consistent with the Charter, Municipal Code Sec. 11-1.12 authorizes the Council to exercise broad discretion in awarding franchises, including engaging in exclusive negotiations with an existing franchisee.

The 2015 franchise agreement included several new services for Hayward businesses and residents as well as elements intended to increase diversion from landfills. Regardless of whether conducting negotiations with the current service provider or receiving proposals from all interested service providers, the City can request that the new contract include new service and diversion elements.

## **DISCUSSION**

The City has two main options regarding the franchise agreement. The first is to consider a negotiated agreement with WMAC, to continue the current franchise agreement beyond its initial, intermediate, or eventual expiration date. The second option is to prepare and issue a request for proposals (RFP), before or after any discussions with WMAC, and call for new proposals from any qualified and interested service provider, including WMAC.

To preserve and protect Council's prerogative to either enter into exclusive negotiations with WMAC for an extension of the current franchise agreement or to prepare and issue a request for proposals (RFP) to secure a new contract, either with WMAC or new service provider(s), staff is recommending entering into a limited-period of negotiations with WMAC. This will provide more information to staff and to Council as to whether it is in the City's best interests to continue with WMAC through the extension period(s) or to issue a Request for Proposals. Regardless of whether conducting negotiations or requesting proposals, an overarching goal of any new agreement is to preserve and enhance the services that the community is currently receiving under the franchise agreement, while maintaining competitive and reasonable service fees.

### *Enhancing Services for the Hayward Community and Complying with New Laws*

Staff developed the following set of potential elements for consideration in a new franchise agreement. This list provides current and emerging issues, and predominant on this list are issues related to the upcoming implementation of Senate Bill 1383, Short-lived climate pollutants (SLCP)<sup>2</sup>, of which the service provider will be a key partner. A top goal

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<sup>2</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1383](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383)

of SB 1383 is reducing statewide methane emissions through reduced landfilling of organic waste (yard trimmings, food scraps, paper, wood, and more). The regulations require that by 2022 jurisdictions provide organics recycling programs, create mandatory participation policies, increase edible food recovery efforts, and enforce organics recycling program participation by residents and businesses.

- SB 1383
  - Requires container color coding by stream type: Recycling (Blue), Organics (Green), Trash (Black or Grey). Generally, replacing the entire bin, rather than just the lid (as required by SB 1383 regulations), will be more effective for public education. Changing over the entire cart inventory can cost more than \$10 million and result in tens of thousands of existing usable carts being rendered obsolete, so scheduling and costs should be considered.
  - Requires edible food recovery. Staff will consider whether there should be a sub-contract for collection of donated food/food recovery services.
  - Requires procurement of compost, mulch, renewable gas, and/or electricity from biomass conversion. Switching truck fuel to renewable natural gas and/or adjusting compost giveaways and City mulch allotments may help fulfill these requirements.
  - Requires monitoring for contamination. Including cameras in organics bins, hiring auditors, and cameras in trucks may be considered.
- Contamination is an increasing concern in both the recycling and organics streams as it causes significant cost issues in post-collection processing, which ultimately impacts rates. The City might need to consider allowing the hauler to assess financial penalties on customers for contamination.
- Schools – Schools can be covered by franchises but are not required. Asking customers to follow the same recycling rules at school and home would be an advantage for public education. Staff has spoken with the Hayward Unified School District, California State University East Bay and Chabot College about exploring the possibility of including these educational institutions in the next franchise agreement. All have indicated in interest in being a part of the City's franchise agreement.
- Public Litter Cans – The City might consider increasing the number of public litter cans that can be serviced by the hauler.
- Low-to-Zero Emission Trucks – Staff will explore requiring the service provider to implement the use of low-emission collection vehicles, should technology evolve to make implementation feasible during the life of the contract.

- Local Processing of and Marketing for Plastics and Paper – The new contract could incentivize the development and use of local processing facilities and markets for recyclables.
- Organics Diversion - The new contract could incentivize reaching new levels of organics diversion by sending Hayward organics to WMAC's organics material recovery facility.
- Illegal Dumping Collections - A new service included in the 2015 Franchise Agreement was that WMAC collect up to six occurrences of illegal dumping per week in Hayward. The new contract could consider increasing the number of occurrences of illegal dumping WMAC collects.
- Residential Recycling Collection – WMAC currently subcontracts with Tri-CED to collect most residential recycling. Tri-CED has been facing significant challenges. Council should consider conditions under which the new franchise agreement would continue to use Tri-CED for residential recycling services.

*Negotiating an extension of current franchise vs. issuing new RFP*

The advantages and disadvantages of conducting negotiations with the current service provider or going out to bid are listed below.

*Enter into an initial period of negotiations with current franchisee:*

Advantages include:

- A new franchise agreement with enhanced services to the community can be in place and commence more quickly.
- WMAC has historically provided the City with reasonable rates; staff expects rates to remain reasonable under any extension of the current franchise.
- WMAC has been providing reasonably good service and has been responsive to City needs when they are asked to respond; staff expects this to continue in the future.
- WMAC has served the City for decades and knows the City well; there is no learning curve.
- In the past 30 years, WMAC has been affected by only one employee action work stoppage; the company worked very hard to reduce the impact to Hayward residents and businesses.
- Consistent with the City priorities, WMAC has incorporated several green practices in its operation, including extracting bio-gas from its landfill to fuel a fleet of its collection trucks.

- WMAC has a regional transfer station, which is located only eight miles from downtown Hayward, and which has adequate capacity to meet its current needs and plans for substantial improvements in the future.
- WMAC owns and operates an in-County disposal site at Altamont Landfill with sufficient capacity for the next several decades. Incidentally, Measure D “waste disposal” funds are more easily assessed, collected, and remitted to the City since waste is disposed at an in-County landfill.

Disadvantages include:

- There is no objective way of knowing the rates that other service providers might propose for the same service levels.
- Given the opportunity, other service providers might be able to offer services, including customer service, that are more innovative, efficient, and effective than those provided by WMAC.

*Prepare an RFP for a potential new franchisee:*

Advantages include:

- Provides a level playing field for other service providers to submit proposals.
- City might get a lower-cost proposal through such a process.
- As a general rule, it is sometimes a good idea to contract with new service providers as a tool to discourage complacency and encourage innovation and competition.

Disadvantages include:

- Most items that are enumerated as “Advantages” under negotiating with WMAC.
- While there is sufficient time before the expiration of the initial terms, and there are three one-year extensions of the current contract, issuing a request for proposals and selecting a contractor can be a lengthy, costly, and labor-intensive process.
- There is a possibility the City may not obtain a lower-cost proposal compared with a negotiated extension of the current franchise.
- While it is not possible to predict what could happen in the future, a new service provider offering services at untested rates might not be able to keep its commitments and remain financially viable, resulting in unexpected rate hike requests, or the prospect of financial insolvency.

Residential recycling services:

Since inception of the residential recycling thirty years ago, the service has been provided by Tri-CED Community Recycling, as a subcontractor to WMAC. In recent years due to reluctance of China and some other countries in accepting recyclables from the US, Tri-CED has experienced financial and operational challenges. For any new or extension of the existing franchise and in consultation with Tri-CED, a decision would have to be made regarding continuation of the services by Tri-CED.

Timeline:

The estimated schedule for completing the negotiations is summarized as follows:

*Negotiated Agreement Successful:*

Request Council Authorization to Begin Negotiating with WMAC	June 23, 2020
Begin Negotiating Period	July 1, 2020
End Negotiating Period and Report to Council	October 31, 2020
Complete New Franchise Agreement and Schedule Council Action	by June 2021

*Negotiated Agreement Unsuccessful:*

Request Council Authorization to Begin Negotiating with WMAC	June 23, 2020
Begin Initial Negotiating Period	July 1, 2020
Conclude Initial Negotiating Period and Report to Council	October 31, 2020
Prepare RFP for Consultant Services for Assistance with Selecting the Franchisee	Early 2021
Council Action for Entering into an Agreement with Selected Consultant	Spring 2021
Prepare RFP (with consultant's help) for Council issuance	Summer/Fall 2021
Receive Proposals	Winter 2021/2022
Select a Franchisee and Negotiate a Contract	Spring 2023
Council Approval of New Franchise Agreement	Summer 2023
New Service Provider to Order Carts, Bins, Vehicles, etc.	Summer 2023
Receive equipment and distribute new collection carts	Summer 2024
Begin New Service	January 1, 2025

**FISCAL/ECONOMIC IMPACTS**

Maintaining reasonable solid waste and recycling service fees and improving service levels would have a positive impact on the community. Regardless of the path chosen, the negotiation of a new franchise agreement is likely to require significant staff time; however, such staff time will be absorbed by already budgeted positions. Under a new franchise agreement, Council will have an opportunity to assess and set new Franchise

Fees, which may benefit the City's General Fund, Recycling Fund, Stormwater Fund, and Street System Improvement Fund.

### **STRATEGIC ROADMAP**

This agenda item does not directly relate to any of the six priorities outlined in the Council's Strategic Roadmap. It is possible that a new franchise agreement could support the following project in the *Support Quality of Life* Strategic Priority:

- Project 7: Implement targeted illegal dumping prevention program
- Project 7, Part 7a: Pilot programs and analysis
- Project 7, Part 7b: Roll out permanent program

### **SUSTAINABILITY FEATURES**

Solid waste management involves the safe and responsible management of discarded material from generation through processing to disposal. Reducing waste landfilled by maximizing the reuse, recycling, and composting of materials increases diversion, conserves natural resources, and plays an important role in making a community sustainable.

### **PUBLIC CONTACT**

No public contact has been conducted.

### **NEXT STEPS**

Upon direction from Council, staff will take appropriate actions to either negotiate with WMAC to extend the current contract or prepare and release an RFP.

*Prepared by:* Jeff Krump, Solid Waste Program Manager

*Recommended by:* Alex Ameri, Director of Public Works

Approved by:



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Kelly McAdoo, City Manager