



DATE: April 5, 2022
TO: Mayor and City Council
FROM: Director of Public Works
SUBJECT Solid Waste and Recycling Franchise Agreement: Update on Negotiations

RECOMMENDATION

That Council receives an update on the status of current negotiations with Waste Management of Alameda County (WMAC), and provides comments to staff.

SUMMARY

The City holds a franchise agreement with WMAC to provide solid waste, recycling, and organic materials collection, and processing services. The current agreement commenced March 1, 2015, and was scheduled to expire March 1, 2022. The agreement includes the option to extend for three, 12-month periods, and on January 18, 2022 Council opted to extend the contract for one year. If the City extended the contract the maximum numbers of times, the agreement would expire March 1, 2025. Staff is currently negotiating exclusively with WMAC as authorized by Council. Most recently, on January 18, 2022, staff requested from Council and was granted an extension of the exclusive negotiating period until June 30, 2022.

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.

At the March 9, 2020¹ Council Sustainability Committee (CSC) meeting, the CSC discussed possible approaches to the new solid waste franchise agreement, and recommended the City start exclusive negotiations with WMAC. The CSC also expressed a desire for the City to partner with Hayward schools, if possible, so that solid waste services and outreach would be consistent throughout Hayward. The CSC also directed staff to be innovative and sustainability-minded in negotiations.

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

At its June 23, 2020² meeting, Council approved a period of exclusive negotiations with WMAC through October 31, 2020. At the October 27, 2020 meeting, Council extended the exclusive negotiating period until June 30, 2021.

At the November 9, 2020³ CSC meeting, staff presented an update on negotiations. The CSC expressed a desire for increasing the number of public litter cans, as well as increasing the number of illegal dumping collections performed by WMAC, and flexibility on the contract length. At its March 8, 2021⁴ meeting, the CSC heard from Hayward recycling service providers, WMAC and Tri-CED, about the ongoing negative effects of the China National Sword policy on the recycling markets in California, and the importance of reducing contamination in collected recyclables.

On June 15, 2021⁵, Council approved an extension of the exclusive negotiation period with WMAC through December 31, 2021. On October 26, 2021⁶, Council received a report updating them on franchise agreement negotiations and Council held a work session on the negotiations between the City and WMAC. Council expressed a desire to keep rates reasonable, install more public litter cans, try to maintain the Main Street office, and maintain the bulky collection service. Council also expressed concern about SB1383 mandates wasting functional recycling and garbage carts merely due to their colors and not matching the State's new color scheme, and requiring jurisdictions to procure and disseminate a very large amount of organic material.

On January 10, 2022, staff presented an update to the CSC and recommended a one-year extension of the current contract. The CSC supported the recommendation and suggested bringing up the topic of a possible combined City of Hayward and Hayward Unified School District contract at the next Hayward Local Agencies Committee (HLAC) meeting. The CSC also recommended that staff promote the bulky item pick-up service in The Stack Newsletter. On January 18, 2022⁷, Council approved the one-year extension of the contract and also granted an extension of the exclusive negotiating period until June 30, 2022. On March 28, 2022, staff presented an update to the CSC on the negotiations. The CSC's comments will be included in staff's presentation to Council on April 5.

DISCUSSION

While, negotiations have proceeded at a slower pace than anticipated, staff and WMAC have increased the frequency of meetings in 2022 and are making swifter progress. With the one-year extension approved by Council in January, the current franchise agreement term will end on March 1, 2023. However, staff and WMAC aim to have all elements of a new agreement in place by the end of April 2022. Once the terms of the new franchise

² <https://hayward.legistar.com/LegislationDetail.aspx?ID=4576643&GUID=060523BF-B23D-49D7-A78E-F40F4DB335C4&Options=&Search=>

³ <https://hayward.legistar.com/LegislationDetail.aspx?ID=4686767&GUID=7FE71371-C877-447E-993D-AFA9732B3526&Options=&Search=>

⁴ <https://hayward.legistar.com/LegislationDetail.aspx?ID=4816826&GUID=3FAFD9A3-6BEF-4BFE-B619-BB9C4A346E51&Options=&Search=>

⁵ <https://hayward.legistar.com/LegislationDetail.aspx?ID=4983870&GUID=CFAEB194-2F77-4434-BBD1-5FB23712A6E9>

⁶ <https://hayward.legistar.com/LegislationDetail.aspx?ID=5192092&GUID=1893F7A1-05E5-4606-9364-31F12BF785BD&Options=&Search=>

⁷ <https://hayward.legistar.com/LegislationDetail.aspx?ID=5382579&GUID=C1A9EF92-809E-4109-9D94-B44070621B45>

agreement are agreed upon, the public noticing and approval hearings will take approximately four months before the new contract can take effect. The following is an overview of some of the key services that have been discussed during negotiations since January.

Terms Tentatively Negotiated

Diversions Requirements

The current contract includes very ambitious landfill diversion requirements for WMAC called the franchise recovery rate⁸ that proved too ambitious and were not attained. For example, the current landfill diversion requirement for 2022 is 74%, and WMAC's franchise recovery rate for 2021 was 35%. Staff and WMAC discussed potential revisions to the diversion requirements and have tentatively agreed upon the following new franchise recovery rate requirements per year for the new contract.

<u>Year</u>	<u>Franchise Recovery Rate</u>
<u>2023</u>	<u>36%</u>
<u>2024</u>	<u>37%</u>
<u>2025</u>	<u>38%</u>
<u>2026</u>	<u>40%</u>
<u>2027</u>	<u>42%</u>
<u>2028</u>	<u>44%</u>
<u>2029</u>	<u>46%</u>
<u>2030</u>	<u>48%</u>
<u>2031</u>	<u>49%</u>
<u>2032</u>	<u>50%</u>
<u>2033</u>	<u>50%</u>

Hayward's overall diversion rate as reported to CalRecycle was 73% in 2020. Staff estimates that if the above-listed goal for 2032 is achieved, then Hayward's overall diversion rate would improve by approximately 10%. WMAC plans to reach the proposed franchise recovery rate requirements by upgrading their sorting equipment at the Davis Street facility in San Leandro, increasing outreach about contamination and focusing outreach on customers who produce the highest volume of solid waste. WMAC also plans to ensure commercial customers comply with SB1383, and help larger generators of dry waste better separate their recyclables. The current agreement allows the City, after following due process, to assess liquidated damages of \$100,000 per year for failure to comply with diversion requirements. WMAC has agreed to keep this provision in the new contract.

Multi-Family Properties – Eliminate Surcharge for the Use of Bins for Recycling

While Tri-CED provides recycling services for most residential customers in Hayward, Tri-CED does not have front-end-load trucks used to service metal bin containers. However, some properties would rather use bins than carts, and properties that choose recycling bin service must be serviced by WMAC. When the current contract was negotiated, it was

⁸ The franchise recovery rate only applies to material collected by WMAC. The franchise recovery rate does not include material self-hauled to the Davis Street Transfer Station or material handled by third parties.

agreed that these properties would pay the per dwelling unit recycling fee paid by all multi-family properties and also a discounted rate for recycling bins from WMAC. This discounted rate was 20% the cost of an equivalent-sized solid waste bin. In the spring of 2021, it was discovered that the rate for recycling bins had been inadvertently increased to be 50% the cost of an equivalent-sized solid waste bin. On June 15 2021⁹, Council approved refunds to multi-family customers for the difference. WMAC and staff have tentatively agreed to not require multi-family properties to pay any additional rate for a recycling bin. This way, all multi-family properties will be charged the same per dwelling unit recycling fee regardless of container type or size.

The following tentatively agreed-upon elements have not changed since the January 18, 2022 report to the Council.

SB 1383 Cart and Bin Requirements

SB 1383 and subsequent regulations developed by CalRecycle¹⁰ include several requirements that the franchise agreement can help address, including a cart color mandate. Trash carts are mandated to be black or gray, recycling carts are mandated to be blue, and organics carts are mandated to be green. WMAC and Tri-CED will replace all trash and recycling carts to meet SB 1383 requirements, which in addition to being compliant will also provide Hayward customers with sturdy carts over the life of the contract, which could potentially be 13 years. WMAC will also paint, replace, or change the lid color of existing bins to match the required color scheme.

SB1383 Organics Procurement

SB1383 requires that jurisdictions procure organics material annually based on population, and Hayward's requirement equates to about 13,000 tons of mulch or compost needing to be procured annually. WMAC has agreed to increase the amount of compost provided for compost giveaways from 5,000 bags of compost to 10,000 bags per year. The City will need to procure approximately an additional 12,500 tons to meet SB 1383 requirements. CalRecycle has indicated that strict enforcement of this requirement may not occur until 2025 and also that jurisdictions may receive credit for compost used on some private building projects. Staff and Stopwaste continue to work with CalRecycle to clarify procurement requirements and enforcement plans. WMAC is willing to include the cost of compost procurement in the new franchise agreement.

SB 1383 Monitoring for Contamination

SB 1383 requires monitoring customers' containers for contamination. Staff and WMAC have discussed at length the procedures and criteria to be used to define and determine levels of contamination. WMAC has proposed to use cameras on collection trucks to monitor contamination, and also implement a method of charging fees for repeated occurrences of unacceptable levels of contamination. The warnings and surcharges related to contamination are listed in Attachment II.

⁹ <https://hayward.legistar.com/LegislationDetail.aspx?ID=4983871&GUID=73F41AA1-8BF7-44AF-9049-75713D5E547A&Options=&Search=>

¹⁰ <https://www.calrecycle.ca.gov/organics/slcp/>

Overage Charges

In addition to monitoring contamination, staff and WMAC have agreed to use the truck camera system to monitor for overages and implement a method of charging fees for overflowing carts and bins. Overage would be defined as a container's lid being open by 12 inches or more.

Big Belly Trash Receptacles

WMAC has agreed to increase the total number of public litter cans allowed citywide from 400 to 500, and allow for the installation of 25 Big Belly dual containers (trash & recycling), per year over the first four years of the contract. In addition, staff is considering replacing all the black metal cans in the Downtown area with new Big Belly dual containers. Many of the lids have been removed from the black metal cans and the Big Belly design deters overfilling and scavenging.

Davis Street Self-Haul Vouchers for Excess Waste

WMAC has agreed to continue offering 5,000 free disposal coupons every calendar year to all Hayward residents. The coupons are redeemable for the disposal of 2 cubic yards of waste at the Davis Street Transfer Station.

Household Battery Collection Expansion

Currently, household battery collection is only offered to single-family homes. WMAC has indicated it can provide collection containers for multi-family properties that may be located in a property manager's office. WMAC has also agreed to provide containers for collection of household batteries in public locations such as City Hall and the libraries.

Public Litter Container Service

WMAC may use its Smart Truck technology to record video of the servicing of public litter cans to ensure cans receive the agreed-upon schedule of service. WMAC will provide monthly summaries of locations and dates of servicing for each container and accept increased liquidated damages for missed collection while also adding contract definitions for Abandoned Waste, Litter, and Excluded Material.

Electric Vehicles

Staff asked WMAC to leverage the opportunity presented by a new franchise agreement to seriously investigate deploying new electric route trucks instead of acquiring new compressed natural gas (CNG) trucks. WMAC has indicated that electric vehicle technology needs to mature further in order to feasibly and reliably power the hydraulic lift system and carry the heavy load of a collection truck. However, WMAC agreed to potentially include some electric-power trucks to perform route service, should technological and economical changes occur through the course of the contract. In the near term, WMAC agreed to add smaller electric support vehicles such as supervisor pick-ups, and trucks that deliver carts or collect bulky material to its fleet that serves Hayward, as current technology allows those vehicles to operate reliably. Tri-CED also agreed to add an electric pickup truck and a flatbed truck for container distribution to its fleet.

Recycling Markets

City staff have tentatively agreed to add contract language to allow for rate adjustments if WMAC's revenue from the sale of recycling commodities changes significantly. WMAC has agreed to add Destinations of Recyclables to quarterly reports. Contract language will also be updated to reflect the California Statewide Commission on Recycling's recently published list of items that are truly recyclable.

Elements Under Discussion

Main Street Office

WMAC's office on Main Street has been closed for most of the pandemic. Closing the office would save Hayward less than \$200,000 over the course of the contract, or about 0.39% of the proposed rate increase that would be implemented with the new contract. This equates to approximately 15 cents per month for the typical single-family household.

Rate Compression

City staff have agreed to the concept of "rate compression" or adjusting larger size cart rates to encourage customers to select the right size for their needs, but this requires further discussion. Staff intends to limit changes to rates so that any given customer does not experience an excessive rate increase. Potential alterations to the rate structure are still under discussion.

Biosolids Management

New legislation will require that the management and disposal of Hayward's biosolids change during the term of the new contract. The cost and potential operational changes are still under discussion.

Overall Cost

The overall initial rate increase, rate structure and cost of service is still under discussion. WMAC is completing economic projections, running cost models, and acquiring information from Tri-CED and has yet to provide final information to the City for review. WMAC has also requested a cost-based analysis be conducted during the course of the contract, where an approved return on investment is reviewed and assured.

Timeline

Staff is hopeful that negotiations can be completed in the spring of 2022 so that a new contract can be presented to Council in summer 2022. The current agreement allows the City to request two additional one-year extensions, for an ultimate expiration on February 28, 2025. If negotiations are not completed in spring of 2022, staff may request that WMAC allow the City an additional one-year extension for a potential ultimate expiration of February 28, 2026. Otherwise, staff would recommend issuance of a request for proposals to potentially select a hauler through a competitive process, which could take approximately two and a half years. The anticipated schedule for completing negotiations as well as the alternate schedule are as follows:

Negotiated Agreement Successful:

Council Work Session to Consider Negotiated Terms	April 5, 2022
Council Hearing to Consider Approval of New Agreement	June 2022
New Agreement Takes Effect	September 1, 2022

If Terms Not Agreed Upon by April 2022:

Issue RFP for Consultant Services for Assistance with Selecting a New Franchisee	May 2022
Council Action to Hire Selected Consultant	July 2022
Prepare and Issue RFP	Fall 2022
Receive Proposals	Winter 2022
Select a Franchisee and Negotiate a Contract	Spring/Summer 2023
Council Approval of New Franchise Agreement	Fall 2023
New Service Provider to Order Carts, Bins, Vehicles, etc.	Fall 2023
Receive equipment and distribute new collection carts	Fall 2024
Begin New Service	January 1, 2025

ECONOMIC IMPACT

As per comments and directions from the CSC and Council, staff is striving to keep rates reasonable and enhance services and has considered equity throughout negotiations. Staff negotiated a reduced cost of recycling bins for multi-family dwellings, retained the smallest, lowest cost garbage cart rate and the continuation of bulky collection for multi-family dwellings. Staff also negotiated for a new battery collection service for multi-family properties as it is currently only available to single-family properties. The low-income rate assistance program will also remain part of the agreement. Maintaining reasonable solid waste and recycling service fees and improving service levels would have a positive impact on the community.

Rate Adjustment Implementation: The City has two main options for rate adjustment implementation, with each having two variations:

- Option 1: Keep the rate year March 1, as is currently.
- Option 2: Move the rate year to September 1 to coincide with the effective date of the new franchise agreement.

Under Option 1, the negotiated new franchise rate adjustment can be implemented on September 1 (Option 1A), or be delayed to March 1 (Option 1B).

Under Option 1A, customers will see the new franchise rate adjustment on September 1 and a CPI adjustment on March 1, 2023, and every March 1 thereafter.

Under Option 1B, customers will not see any increase until March 1, 2023; however, at that time the franchise rate adjustment will have to be slightly increased to account for the 6-month delay in its implementation. Like Option 1A, there will also be a CPI adjustment.

Staff recommends Option 1B, which allows for a full 12-month separation between rate adjustments.

The two variations under Option 2 are not recommended since 1) they require a rate increase on September 1, only 6 months after the last increase, and 2) for administrative and billing reasons, WMAC is not in support of Option 2.

Again, staff recommends Option 1B, which has no increase in September.

FISCAL IMPACTS

Negotiation of a new franchise agreement continues to require significant staff time; however, such staff time will be absorbed by already budgeted positions. If rates are increased, Franchise Fees will modestly increase, which will benefit the City's General Fund, Recycling Fund, Stormwater Fund, and Street System Improvement Fund.

Franchise Fees

Staff recommends no change in the total franchise fees, but staff is proposing a re-allocation of the existing fees as shown below in Table 5. The change would increase the amount of the Street Impact Fee to address Hayward's increasing costs for pavement rehabilitation. There would be a corresponding decrease in the Street Cleaning Fee.

This change is recommended to bring the contribution to pavement and rehabilitation more in line with the impact of truck traffic on City streets.

Table 5. Recommended Re-Allocation of Franchise Fees

	Existing	Proposed
Franchise Fees	13.5%	13.5%
Street Cleaning Fees	2.5%	1.0%
Street Impact Fees	1.0%	2.5%
Measure D Augmentation	1.0%	1.0%
Total	18.0%	18.0%

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

After receipt of comments from Council, staff will continue to negotiate with WMAC and update Council prior to June 30, 2022. If negotiations are not successful, the City could prepare and issue a request for proposals (RFP) and call for new proposals from any qualified and interested service provider, including WMAC.

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Approved by:



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