



DATE: January 18, 2022

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT Adopt Two Resolutions: 1) Authorizing the City Manager to Continue Exclusive Negotiations with Waste Management of Alameda County for a New Solid Waste and Recycling Franchise Agreement until June 30, 2022; and 2) Authorizing the City Manager to Extend the Current Franchise Agreement with Waste Management of Alameda County by One Year to Expire March 1, 2023

RECOMMENDATION

That Council adopt two resolutions: 1) extending the current Solid Waste Franchise Agreement between Hayward and Waste Management of Alameda County (WMAC) for twelve months until March 1, 2023 (Attachment II); and 2) extending the authorization for exclusive negotiations with WMAC until June 30, 2022 (Attachment III).

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 is scheduled to expire March 1, 2022. The agreement includes the option to extend it for three, 12-month periods. If the City opted to extend the contract by the maximum numbers of times, the agreement would expire March 1, 2025. Staff and WMAC have made good progress in negotiating a new agreement, but it has become apparent that it will not be possible to have all terms agreed upon before March 1, 2022, so staff is requesting to extend the agreement for one 12-month period.

Staff is currently negotiating exclusively with WMAC as authorized by Council. Most recently, on June 15, 2021, staff requested from Council and was granted an extension of the exclusive negotiating period until December 31, 2021. Staff is requesting another extension of the exclusive negotiating period until June 30, 2022.

Review by Council Sustainability Committee – On January 10, 2022, the Council Sustainability Committee (CSC) considered a report with an update on solid waste franchise agreement negotiations. The CSC recommended that Council extend the Solid Waste Franchise Agreement for 12 months until March 1, 2023 and also extend the authorization for exclusive negotiations with WMAC until June 30, 2022. The Committee

also requested more advertising of the bulky pickup service and commented that community outreach and operational efficiencies could be improved if the Hayward Unified School District also contracted with WMAC.

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 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.

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.

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

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=>

DISCUSSION

Although negotiations have been productive, they have been proceeding at a slower pace than anticipated. The current franchise agreement term will end on March 1, 2022. Once the terms of the new franchise agreement are agreed upon, the public noticing and approval hearings will take approximately four months before the new contract can take effect. Therefore, staff recommends extending the current franchise agreement for one 12-month period, starting March 1, 2022, and ending March 1, 2023. However, the full 12 months may not be needed, and Council can start the new contract at any time. Staff also recommends extending the exclusive negotiating period to June 30, 2022.

SB 1383 requires extensive efforts by jurisdictions to reduce the amount of organics sent to landfill and increase recycling. The law requires monitoring of customers' containers for contamination and also requires that the City procure significant quantities of organic material, primarily compost and mulch. Staff and WMAC have been discussing how to best craft a new agreement that will ensure the City is able to effectively and efficiently comply with SB 1383 regulations.

The following is an overview of some of the key services that have been discussed during negotiations since October 26, 2021.

Elements Tentatively Agreed Upon

SB 1383 Cart and Bin Requirements

SB 1383 and subsequent regulations developed by CalRecycle⁷ 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. While Hayward's existing organics carts are already green, WMAC and Tri-CED will replace trash and recycling carts to meet SB 1383 requirements. 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. Staff continues to discuss with WMAC the possibility of including the cost of compost procurement in the new franchise agreement.

⁷ <https://www.calrecycle.ca.gov/organics/slcp/>

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.

Overage Charges

When containers are over-filled and lids are not closed, loose material can easily become unsightly litter. Also, when recycling containers are not closed, moisture can reduce the value of paper and cardboard. 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 over-filling 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.

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 it can 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 has 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. Tri-CED agreed to add an electric pickup truck to its fleet.

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's servicing of public litter containers has been a concern of the City's for several years. Staff has proposed that WMAC could 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.

Recycling Markets

City staff have tentatively agreed to add contract language to the 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. The precise cost savings of closing the office permanently compared to the benefits of keeping the office open for the next 10 years is still under discussion.

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.

Diversion Requirements

The current contract includes very ambitious diversion requirements for WMAC called the franchise recovery rate that proved too ambitious, and were not attained. Staff and WMAC will discuss potential revisions to the Diversion Requirements.

Biosolids Management

SB 1383 regulations 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:

If directed by Council, staff will continue to negotiate the terms listed above. 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. If negotiations are not completed in spring of 2022, staff may recommend issuance of a request for proposals (RFP) to potentially select a hauler through a competitive process to serve Hayward. The anticipated schedule for completing negotiations as well as the alternate schedule are as follows:

If Negotiated Agreement Successful:

Request Council Approval to Begin Negotiating with WMAC	September 2020
Begin Negotiating Period	October 1, 2020
Council Authorization to Continue Negotiating with WMAC	June 15, 2021
Council Work Session to Review Preliminary Terms	October 26, 2021
Potential Council Action to Extend Negotiating Period	January 2022
Potential Council Action to Extend Current Franchise	January 2022
Council Work Session to Consider Negotiated Terms	March/April 2022
Council Hearing to Consider Approval of New Contract	June 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

FISCAL AND ECONOMIC IMPACTS

Staff is striving to keep rates reasonable and enhance services. The low-income rate assistance program will 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. Regardless of the path chosen, the negotiation of a new franchise agreement will continue 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.

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 adoption of the resolution by Council, staff will notify WMAC in writing that the Franchise Agreement is extended for 12 months until March 1, 2023. Upon direction from Council, staff will continue exclusive negotiations with WMAC with the goal of bringing a proposed agreement to Council prior to June 30, 2022. If negotiations are not successful, the City could prepare and issue an RFP and call for new proposals from any qualified and interested service provider, including WMAC.

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Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager