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2015 SEP 25 AM 8:57

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Brooke A. Levin
Director, Public Works

SUBJECT: Recycling Contract Unit Count

DATE: September 11, 2015

City Administrator Approval

Date:

9/24/15

RECOMMENDATION

Staff Recommends That The City Council Consider:

An Ordinance Amending Ordinance No. 13274 C.M.S. To Approve Residential Recycling Services Contract With California Waste Solutions, Inc., Section 7.08.4 Special Unit Count Review And Adjustment, To Implement A Methodology To Adjust The Monthly Cost Per Household For Recycling Services.

EXECUTIVE SUMMARY

Pursuant to Section 7.08.4 Special Unit Count Review and Adjustment of the executed Residential Recycling Services Contract (RR Contract) for Oakland, the City Council is requested to consider adoption of an ordinance which would establish a methodology to adjust the cost per household for recycling services, to allow California Waste Solutions (CWS) to recoup claimed average annual losses of approximately \$800,000. During negotiation with staff on the final contract terms, CWS asserted that such losses would result due to CWS' reliance on information provided by City staff regarding the number of households (unit count), which CWS used to prepare cost proposals for the RR Contract. To resolve this dispute RR Contract Section 7.08.4 was negotiated and incorporated into the final contract for City Council consideration no later than December 31, 2015, and a potential rate increase effective July 1, 2016.

RR Contract Section 7.08.4 provides a methodology to calculate the losses represented by the differential between the number of households assumed by CWS in their cost proposal and the number of households actually served by CWS. The impact on Oakland's residential customers, should City Council approve the ordinance, is an estimated increase of \$0.96 per household per month beginning July 1, 2016, and additional lesser amounts for the following four or five years. Details on the rate impacts are shown in *Table 1* in the Analysis and Policy Alternatives section of this report.

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BACKGROUND / LEGISLATIVE HISTORY

At a Special Meeting on August 13, 2014, the City Council approved Ordinance No. 13254 C.M.S., granting a franchise for Residential Recycling Collection Services to California Waste Solutions (CWS). At a Special Meeting on September 29, 2014, the City Council approved Ordinance No. 13258 C.M.S., which in part, granted a franchise for Mixed Materials and Organics (MM&O) Collection Services to Waste Management of Alameda County (WMAC) and established maximum service rates for the RR and MM&O contracts. On December 9, 2014, the City Council approved Ordinance No. 13273 C.M.S., which amended Ordinance No. 13258 C.M.S. to add contamination rates, and approved Ordinance No. 13274, which amended Ordinance No. 13254 to extend the term of the RR Contract to 20 years. Prior to RR Contract execution, the City Council received oral reports from staff regarding the status of negotiations between staff and CWS on final RR Contract terms. Oral reports on May 11 and May 19, 2015 included information on the unit count dispute, and the tentative resolution of that dispute was provided in a statement read into the record by staff at the City Council meeting on May 19, 2015 (**Attachment A**).

ANALYSIS AND POLICY ALTERNATIVES

During negotiation of final RR Contract terms in early 2015, CWS asserted that in preparing their rate proposals in 2014, at the direction of the City, they had relied on information provided by the City on number of households. CWS further asserted that its use of this information had artificially depressed CWS' proposed cost per household, which would create an average annual revenue shortfall of approximately \$800,000. The City relied on raw data provided by Waste Management of Alameda County to make its own estimate of the number of households (unit count), which proved to be incorrect. Staff provided this unit count to all RR proposers including CWS, but did not direct the proposers to use this figure in calculating its costs.

In May 2015, the City Administrator executed the RR Contract awarded to CWS by City Council. RR Contract Section 7.08.4 Special Unit Count Review and Adjustment (**Attachment B**) describes a method for adjusting the monthly cost per household for recycling services to address an unresolved dispute between the City and CWS regarding the unit count. By oral report at a City Council meeting on May 19, 2015, staff provided information on this dispute, including that CWS had agreed to implementation of this methodology, subject to City Council approval. Adoption of the draft ordinance amending Ordinance No. 13274 C.M.S. would approve this RR Contract Section 7.08.4. The provisions of RR Contract Section 7.08.4 cannot be implemented without City Council approval.

Should City Council approve the ordinance, beginning in 2016, the City will conduct a review on or after April each year to establish the actual number of households billed, and compare it to the unit count used by CWS in the calculation of its rate proposal. This review would continue until the actual number of households billed is no less than 99.5% of the number used in the proposal. The results of the review will be used to determine whether CWS has experienced a revenue shortfall in the previous contract year. Any shortfall would be corrected by increasing the rates of the residential customers billed the following year.

The estimated impacts of adopting the ordinance approving the unit count adjustment are shown in *Table 1* for single-family dwelling (SFD) rates, and in *Table 2* for multi-family dwelling (MFD) rates, along with rate adjustments already adopted by City Council in the first seven years of the RR Contract. Based on available information on housing construction in the City's Five Year Financial Forecast – Appendix A (Major Housing Projects FY 2015 to FY 2030), <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/report/oak051948.pdf> staff estimates that the unit count adjustment would apply to rates through June 2022, at which time the discrepancy between the actual number of households and that number used by CWS in preparation of their cost proposal will be within 0.5%. Each adjustment is a one-time adjustment that does not become part of the base rate upon which future adjustments are calculated.

Table 1: Estimated SFD Rate Adjustment Impacts, Including Unit Count Adjustment

Rates Effective	July 2016	July 2017	July 2018	July 2019	July 2020	July 2021	July 2022
Prior Year Monthly Rate	\$ 9.17	\$ 10.92	\$ 12.76	\$ 14.33	\$ 15.22	\$ 15.83	\$ 16.46
Annual Adjustment ¹	\$ 0.28	\$ 0.34	\$ 0.51	\$ 0.57	\$ 0.61	\$ 0.63	\$ 0.66
Deferred CPI Adjustment ²	\$ 0.18	\$ 0.21	\$ (0.23)				
Local 6 Special Adjustment ³	\$ 0.32	\$ 0.32	\$ 0.32	\$ 0.32			
\$0.97 Special Adjustment ⁴	\$ 0.97	\$ 0.97	\$ 0.97				
Monthly Rate w/o Unit Count Adjustment	\$ 10.92	\$ 12.76	\$ 14.33	\$ 15.22	\$ 15.83	\$ 16.46	\$ 17.12
Unit Count Adjustment	\$ 0.96	\$ 0.58	\$ 0.57	\$ 0.40	\$ 0.39	\$ 0.12	
Monthly Rate w/Unit Count Adjustment	\$ 11.88	\$ 13.34	\$ 14.90	\$ 15.62	\$ 16.22	\$ 16.58	\$ 17.12
Unit Count Adjustment Impact	10.47%	5.31%	4.47%	2.79%	2.56%	0.76%	

¹ Assumptions include: 3% Annual Adjustment in 2016 and 2017, and 4% thereafter, based on projections and estimates under calculation methodology detailed in Residential Recycling contract; increase in unit count based on data provided in the City's Five Year Financial Forecast - APPENDIX A (Major Housing Projects FY 2015 to FY 2030)

² Adopted by City Council through Ordinance No. 13258 C.M.S., this adjustment to the base rate captures the amount of a deferred first-year CPI adjustment described in RR Contract Section 7.08.1, and spreads it over Contract Years 2 and 3.

³ Adopted by City Council through Ordinance No. 13258 C.M.S., this adjustment to the base rate provides revenue needed to implement City Council Resolution 84898 C.M.S. regarding recycling worker wages and benefits.

⁴ Adopted by City Council through Ordinance No. 13258 C.M.S., this adjustment to the base rate provides CWS additional revenue consistent with the Memorandum of Agreement between CWS and Waste Management of Alameda County.

As shown in Table 1, the estimated single-family unit count adjustment will have a 10.47% impact on the recycling rate (fee) on July 1, 2016. The relatively large impact of this first increase is due to accounting for two years of claimed losses in one rate year, and would generate additional revenues (from SFD and MFD combined) of \$1.8 to \$2.0 million for CWS in Contract Year 2. In Contract Year 3, the rate impact will be 5.31%, and will decline from there.

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Table 2: Estimated MFD Rate Adjustment Impacts, Including Unit Count Adjustment

Rates Effective	July 2016	July 2017	July 2018	July 2019	July 2020	July 2021	July 2022
Prior Year Monthly Rate	\$ 9.20	\$ 10.98	\$ 12.84	\$ 14.45	\$ 15.37	\$ 15.99	\$ 16.63
Annual Adjustment ¹	\$ 0.28	\$ 0.33	\$ 0.52	\$ 0.57	\$ 0.62	\$ 0.64	\$ 0.66
Deferred CPI Adjustment ²	\$ 0.18	\$ 0.21	\$ (0.23)				
Local 6 Special Adjustment ³	\$ 0.35	\$ 0.35	\$ 0.35	\$ 0.35			
\$0.97 Special Adjustment ⁴	\$ 0.97	\$ 0.97	\$ 0.97				
Monthly Rate w/o Unit Count Adjustment	\$ 10.98	\$ 12.84	\$ 14.45	\$ 15.37	\$ 15.99	\$ 16.63	\$ 17.29
Unit Count Adjustment	\$ 0.97	\$ 0.59	\$ 0.57	\$ 0.40	\$ 0.38	\$ 0.13	
Monthly Rate w/Unit Count Adjustment	\$ 11.95	\$ 13.43	\$ 15.02	\$ 15.77	\$ 16.37	\$ 16.76	\$ 17.29
Unit Count Adjustment Impact	10.54%	5.38%	4.44%	2.77%	2.47%	0.81%	

¹ Assumptions include: 3% Annual Adjustment in 2016 and 2017, and 4% thereafter, based on projections and estimates under calculation methodology detailed in Residential Recycling contract; increase in unit count based on data provided in the City's Five Year Financial Forecast - APPENDIX A (Major Housing Projects FY 2015 to FY 2030)

² Adopted by City Council through Ordinance No. 13258 C.M.S., this adjustment to the base rate captures the amount of a deferred first-year CPI adjustment described in RR Contract Section 7.08.1, and spreads it over Contract Years 2 and 3.

³ Adopted by City Council through Ordinance No. 13258 C.M.S., this adjustment to the base rate provides revenue needed to implement City Council Resolution 84898 C.M.S. regarding recycling worker wages and benefits.

⁴ Adopted by City Council through Ordinance No. 13258 C.M.S., this adjustment to the base rate provides CWS additional revenue consistent with the Memorandum of Agreement between CWS and Waste Management of Alameda County.

As shown in Table 2, the estimated unit count adjustment will have a 10.54% impact on the MFD recycling rate (fee) on July 1, 2016. As with SFD, the relatively large impact of this first increase is due to accounting for two years of claimed losses in one rate year. In Contract Year 3, the rate impact will be 5.38%, and will decline from there. Should the City Council not approve the ordinance, RR Contract Section 7.08.4 would not be implemented and no Special Unit Count Adjustment would occur.

FISCAL IMPACT

The rate adjustments discussed in this report apply to residential account holders only and do not affect the City's budget. There are no fiscal impacts to the City associated with this report.

PUBLIC OUTREACH / INTEREST

This item legally did not require any additional public outreach other than that required by the State Brown Act and City's Sunshine Ordinance.

COORDINATION

Public Works Department staff has coordinated with the Office of the City Administrator and City Attorney for this report and ordinances.

SUSTAINABLE OPPORTUNITIES

Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

Social Equity: Increased jobs through additional diversion of materials from the landfill.

CEQA

This is not a project under CEQA.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Consider An Ordinance Amending Ordinance No. 13274 C.M.S. To Approve Residential Recycling Services Contract Section 7.08.4 Special Unit Count Review And Adjustment, To Implement A Methodology To Adjust The Monthly Cost Per Household For Recycling Services.

For questions regarding this report, please contact Becky Dowdakin, Environmental Services Manager, at (510) 238-6981.

Respectfully submitted,



BROOKE A. LEVIN
Director, Oakland Public Works

Reviewed by:
Susan Kattchee, Assistant Director

Prepared by:
Becky Dowdakin, Environmental Svcs Manager
Environmental Services Division

Attachments (2):

A: Oral Report to City Council May 19, 2015

B: RR Contract Section 7.08.4 – Special Unit Count Review and Adjustment

**Oral report on Residential Recycling Contract Unit Count
Read into the Record by Becky Dowdakin on at City Council Meeting on 5-19-15**

To resolve the issue of household count, dwelling unit count, between what is currently billed and the figure that CWS claims to have used in its cost proposal to the City as part of its Best And Final Offer on June 13th, 2014, which CWS claims would cause them to experience a shortfall in gross revenues, it is proposed that staff return to City Council before December 31st, 2015 for consideration of an amendment to the Ordinance establishing the rates that would increase the single-family and multi-family rates for recycling services in the billing cycle beginning in July 1, 2016.

This proposal provides for an annual special adjustment to the rates to account for the difference between the unit count actually billed and the figure of 165,239 household units. The first year of the special adjustment would cover both the first year of the contract, which is July 1st, 2015 to June 30th, 2016 and the second year of the contract July 1, 2016 to June 30, 2017 and therefore the first adjustment would be higher than subsequent rate adjustments. It is anticipated that the first year special rate increase will be approximately \$.071 per dwelling unit per month.

It is anticipated that the annual special adjustment to the rate would continue through Contract Year 7, which is 2022. CWS has been provided language that creates this mechanism in the Residential Recycling contract, and the City and CWS are meeting tomorrow to finalize the contract.

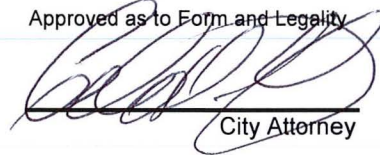
7.08.4 Special Unit Count Review and Adjustment. The provisions of this Section 7.08.4 shall be implemented subject to approval by City Council through an amendment to Ordinance No. 13274 C.M.S., no later than December 31, 2015.

7.08.4.1 Reviews and Adjustments. On or after April 1, 2016, and annually thereafter until such time as the number of SFD and MFD Dwelling Units billed as part of the April 1 billing cycle of the then current Contract Year equals or exceeds ninety-nine and one half (99.5) percent of 165,239, CITY will convene a review process (the "Review") to establish the number of SFD and MFD Dwelling Units billed for Residential Recycling Collection Services during the then current April 1 billing cycle. For purposes of clarity, the first Review will take place during April 2016 and will utilize Dwelling Unit data from the April 1, 2016 billing cycle. The second Review will take place during April 2017 and will utilize Dwelling Unit data from the April 2017 billing cycle. The purpose of each Review is to assess whether CONTRACTOR is experiencing a shortfall of billed gross revenue under this Contract due to the number of SFD and MFD Dwelling Units billed. The Review shall evaluate billed gross revenues generated from this Contract and any impact due to the difference of SFD and MFD Dwelling Units billed and the SFD and MFD Dwelling Unit count of 165,239 (102,274 SFD Dwelling Units and 62,965 MFD Dwelling Units) used by CONTRACTOR in preparing its proposal submitted on June 12, 2014.

One-Time Adjustments. Based on the results of each Review, CITY will determine whether a special one-time adjustment to the SFD and MFD maximum per Dwelling Unit Recycling Rates as set forth in Section A of Exhibits 1A and 1B respectively (the "One-Time Adjustment") may be warranted. The One-Time Adjustments will take into account the cumulative differences in gross billed revenue generated by all the rate components. If such One-Time Adjustment is warranted, each One-Time Adjustment will be effective as of the upcoming July 1 but will not be part of the rate base thereafter. However, if the SFD and MFD Dwelling Unit count at the time of any review is found to be equal to or greater than ninety-nine and one half (99.5) percent of the SFD and MFD Dwelling Unit count of 165,239 then CITY shall not be required to evaluate this further and no further One-Time Adjustments shall be made.

Review and Adjustment. In the event a Review indicates that a One-Time Adjustment is warranted it will be calculated to account for any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30 of the current Contract Year and any shortfall in billed gross revenues projected for the next Contract Year as such billed gross revenues are calculated in accordance with the example set forth in Section 7 of Exhibit 2 to this Contract. For purposes of clarity, in the event the April 2016 Review indicates that a One-Time Adjustment is warranted it will be calculated to account for any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30, 2016 and any shortfall in billed gross revenues projected for the period July 1, 2016 through June 30, 2017. In the event the April 2017 Review indicates that a One-Time Adjustment is warranted it will be calculated to account for any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30, 2017 and any shortfall in billed gross revenues projected for the period July 1, 2017 through June 30, 2018.

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City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 13274 C.M.S. TO APPROVE RESIDENTIAL RECYCLING SERVICES CONTRACT WITH CALIFORNIA WASTE SOLUTIONS, INC., SECTION 7.08.4 SPECIAL UNIT COUNT REVIEW AND ADJUSTMENT, TO IMPLEMENT A METHODOLOGY TO ADJUST THE MONTHLY COST PER HOUSEHOLD FOR RECYCLING SERVICES

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13254 C.M.S., granting a Franchise For Residential Recycling Collection Services And Non-Exclusive Commercial Recycling Collection Services (RR Contract) to California Waste Solutions, Inc. (CWS); and

WHEREAS, on September 29, 2014 the City Council of the City of Oakland approved Ordinance No. 13258 C.M.S., which in part, established rates for the RR Contract; and

WHEREAS, on December 9, 2014, the City Council of the City of Oakland approve Ordinance No. 13274 C.M.S., amending Ordinance No. 13254 C.M.S. to extend the term of the RR Contract to 20 years; and

WHEREAS, in negotiating final RR Contract terms, CWS and the City Administrator agreed to address a dispute regarding the unit (household) count by drafting a methodology for a special unit count adjustment that requires approval by the City Council; and

WHEREAS, on May 22, 2015, pursuant to Ordinance No. 13274 C.M.S., the City Administrator executed the 20-year RR Contract with CWS; and

WHEERAS, RR Contract Section 7.08.4 Special Unit Count Adjustment can only be implemented upon approval of City Council through adoption of an ordinance Amending Ordinance No. 13274 C.M.S.; and

WHEREAS, approval of RR Contract Section 7.08.4 will increase residential recycling rates (fees) by approximately 10% in Contract Year 2, and approximately 5% or less each contract year thereafter, ending after approximately seven contract years; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council does hereby find and declare that the above recitals are true and correct, and does hereby authorize amending Ordinance No. 13274 C.M.S., to approve RR Contract Section 7.08.4 Special Unit Count Review and Adjustment, to implement a methodology to adjust the monthly cost per household for recycling services.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____