



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: February 4, 2020

Subject

Relative to Recology Cupertino's Franchise Agreement with the City:

(1) Termination of the residential on-call, curbside Household Hazardous Waste (HHW) program, termination of collection of the HHW fee, refund of fees collected since January 2019, and establishment of an annual assessment of costs against Recology Cupertino (Recology) in an annual, not to exceed amount of \$93,535; and

(2) Authorization of Recology's request for a Special Maximum Rate Adjustment of an additional \$2.24 per month for residential customers in single-family homes and a rate increase of 3.93% for all other categories of Service Recipients to cover the increased cost of mixed recycling processing as a result of disruption and volatility of overseas recycling commodity markets for the period of October 2018 through January 31, 2021 (Special Maximum Rate Adjustment effective beginning January 1, 2020); and

(3) Authorization to execute Franchise Agreement amendment for same.

Recommended Action

Staff recommends that the City Council approve the following:

1. Termination of the residential on-call curbside HHW program stipulated in the Franchise Agreement, as amended, Section 4.17; and
2. Termination of collection of the HHW fee retroactive to January 1, 2019, with direction for Recology to administer full credits for any fee collected after such date from single and multi-family Cupertino rate payers within no more than thirty calendar days; and
3. Approve and direct Recology to annually pay the City for its costs related to termination of the curbside HHW program not to exceed an annual amount of \$93,535 retroactive to January 1, 2019 and through the remainder of the term of the Franchise Agreement; and
4. Authorize a Special Maximum Rate Adjustment of an additional \$2.24/per month for residential customers in single-family homes and an increase of 3.93% for all other categories of Service Recipients pursuant to Section 12.3 of the Franchise Agreement to cover the increased cost of mixed recycling processing for the period

October 2018 through January 31, 2021 (rate adjustment beginning January 1, 2020 and continuing through January 31, 2021, which is the remainder of the term of the current Agreement); and

5. Adopt Resolution No. 20-013 to Authorize the City Manager to execute the Third Amendment to the Franchise Agreement with Recology Cupertino, implementing the above (Attachment B).

Discussion

This staff report addresses two related topics:

1. **Termination of Curbside HHW Program** by Recology while continuing to charge residents for the service, proposed repayment to residents, and alternative County HHW Program.
2. **Maximum Rate Increase Request** based on changes in the recycling market.

1. Termination of Curbside HHW Program

In May 2010 the City Council authorized the execution of a Franchise Agreement with Recology for solid waste, recycling, and organics services. The agreement includes a provision that Recology is obligated to contract with a qualified third party to provide a curbside HHW program for residents. This program entails administering door-to-door collection, transportation, and disposal of HHW from single-family and multi-family residential properties. This unique curbside HHW program was a benefit to residents and alleviated much of the need for the County Program with few exceptions. The initial third-party contractor selected by Recology was Curbside Inc. which was subsequently acquired by Waste Management (WM) in November 2010. Between November 2010 and December 2018, WM was Recology's contracted provider for curbside HHW collection services in Cupertino. The Franchise Agreement stipulates that the curbside HHW program would be funded by means of the HHW fee, which had been collected from residential service recipients by Recology and remitted to WM for performance of curbside HHW services. The 2019 monthly HHW fee was \$0.56 per single-family residence and \$0.42 per multi-family residence unit.

In late 2018, Recology/WM stopped providing curbside HHW service, although ratepayers continued to be charged for the service. Recology then informed the City in early January 2019 that they were unable to continue the collection of curbside HHW.

Due to Recology's inability to provide the curbside HHW program and because no other replacement option is available, staff recommends that the residential on-call curbside HHW program stipulated in the Franchise Agreement be removed, that the HHW fee no longer be collected and that residents be credited back fees billed since January 1, 2019.

Without the curbside HHW program, residents can safely dispose of HHW through the Santa Clara County Household Hazardous Waste Program (County Program). HHW disposal services are mandated under AB 939. The County Program provides drop off

HHW services for residents of Santa Clara County. With the exception of the City of Palo Alto, which operates its own program, all cities in the County participate in the County Program for safe and reliable HHW disposal. Use of the County Program provides cities a cost-efficient consolidated program capable of meeting the collection, storage, processing, transportation, and permitting requirements, which are onerous and expensive for most cities to provide independently. Residents of participating cities are not charged at the time of drop off, but the County assesses participating cities a per-car cost for each resident using the drop off service.

Separately, through individual agreements, cities authorize the County to collect AB 939 HHW fees (\$2.60 per ton of landfill disposed). Each November, the County Program reconciles each city's account (deducting the County's per-car charge for the HHW drop off program from the AB 939 fees collected); remaining balances are refunded or an invoice for payment of services is issued to the cities. Any refund issued to the cities is used for appropriate HHW program purposes.

The City will incur additional costs due to an overall reduction in HHW program funding. This is because more residents will use the County Program, increasing overall cost to the City. The Franchise Agreement authorizes the City to recover additional costs resulting from Recology's inability to provide the required services. Estimating the actual costs to the City are difficult. Accordingly, City staff has met with Recology on several occasions to discuss the issue and has come to the agreement and recommendation of Recology submitting to the City an annual assessment not to exceed \$93,535 until January 31, 2021 (end of Franchise Agreement term). The Third Amendment to the Franchise Agreement memorializes these new terms (Attachment B).

2. Maximum Rate Increase Request

Under the Franchise Agreement, Recology is the exclusive hauler of garbage, organic, and recyclable materials from all commercial and residential properties in the City. Section 4.1.2 of the Franchise Agreement stipulates that all garbage, organic, and recyclable materials become the property of Recology once they are placed in the collection containers. Once collected, the materials are transported by Recology to the following facilities for disposal or processing:

- Garbage is transported to Newby Island Landfill (Milpitas) for disposal under an agreement between Newby Island and the City;
- Organics are transported to Recology-owned compost processing facilities in Vernalis and Gilroy;
- Recyclables are transported and sold by Recology to GreenWaste Recycling (GWR) in San Jose for processing and subsequent wholesaling by GWR to various domestic and overseas markets.

Recyclable commodities could historically be collected and sold at a price that generated revenue, which could be used to defray the cost of operations and provide a means to reduce customer rates. Through Recology's agreement with GWR, between October 2016 and October 2018, Recology was receiving approximately \$35 per ton for recyclables

delivered and sold for processing. China was the primary buyer of these commodities but in mid-2018, China enacted a set of policies collectively referred to as “National Sword.” In part, these policies imposed restrictions on the allowable contamination levels of imported recyclable commodities from a previous level of 10% to a new level of 0.5%. Ensuring recyclables can be processed in a manner to meet the new contamination threshold has resulted in a tiered cost structure that is currently between \$10 and \$65 per ton based on the level of contamination in collected materials. Instead of Recology earning revenue of around \$35 per ton, Recology is now incurring a cost between \$10 and \$65 per ton to process recyclable materials. Those costs are passed on to Recology by GWR for each truckload of Cupertino-generated material Recology delivers to GWR.

In accordance with Section 12.3 of the Franchise Agreement, Recology may request a Special Maximum Rate Adjustment for changes or events outside of their control resulting in reasonable additional costs due to any change in law. Special adjustments are solely at the reasonable discretion of the City based on the written request and supporting documentation provided by Recology. Recology provided such documentation informing the City on October 15, 2019 that due to increased processing costs of recyclables, they are requesting a Special Maximum Rate Adjustment.

City staff reviewed the methodology of Recology’s request and found that Recology was requesting a maximum rate increase for both additional costs and for lost revenue. As the Franchise Agreement does not provide for recovery of lost revenue, the lost revenues were removed from the requested compensation. To further audit the request and supporting financial documents for consistency and accuracy, City staff retained the services of HF&H Consultants, LLC. HF&H assisted in making additional reductions in the requested amount of the rate increase. In the analysis, cost projections and recovery amortization were also extended through to January 31, 2021.

After several meetings with Recology and with the input of HF&H, a revised Special Maximum Rate Adjustment was determined and agreed to by Recology through January 31, 2021. The amount of the increase is a \$2.24 charge per month per single-family residential customer and a 3.93% rate increase for all other categories of Service Recipients. Alternatively, the City could pay Recology a one-time lump sum amount of \$527,440¹. Staff do not recommend a one-time payment since rates should be on a “pay as you go” basis and not be subsidized at the risk of even higher rates in the future. Recology submitted a new amended request letter on January 28, 2020 that reflects this revised information (Attachment C).

Local agencies throughout California have faced similar waste management challenges under National Sword, and their responses have varied. Some jurisdictions have rejected hauler proposals to shift the burden of costs or market risks. For example, in mid-2018,

¹ The proposed rate scenario calculations include the Franchise Fee and Solid Waste Fund Operations Fee in accordance with section 11.6 of the Franchise Agreement which requires those fees to be applied to all applicable revenues.

IMS Recycling, Inc. and Allen Company approached the City of San Diego about transitioning to a fee-based pricing model through the end of their franchise agreement. While the City agreed to suspend the franchisees' per-ton, flat-rate payment to the City, the City refused to pay the franchisees for recycling services.

Other jurisdictions, however, have agreed to alter payment structures with their franchise haulers and processors. For example, where Amador County used to receive \$33 per ton of recyclable material, it now pays its processor \$160 per ton. Similarly, Bakersfield previously earned about \$25 per ton of recyclables and now is reportedly paying around \$70 per ton for service. These increased costs are generally passed on to residential customers. Similarly, the City of Fremont has increased its residential garbage rates by \$1.50 a month to offset additional sorting and processing costs.

Sustainability Impact

Providing a solvent and reliable HHW disposal program for City residents is a vital service to ensure HHW is not disposed of illegally in the garbage, recycling, or organics waste stream or disposed of in City parks and other public places. Illegal disposal of HHW creates significant risk of physical harm to landfill and recycling facility workers, municipal staff tasked with clean-up of hazardous materials, and the public who may encounter dumped hazardous waste. Illegal disposal of HHW can also result in environmental degradation and threats to wildlife. Participation in the County Program provides Cupertino residents the opportunity to properly dispose of HHW.

Recycling programs that are convenient, well utilized and properly funded are essential to diverting recyclable materials from the landfill in accordance AB939, the California Integrated Waste Management Act that requires at least 50% diversion from landfill after 1/1/2020 and the City of Cupertino's Zero Waste Policy adopted December 19, 2017.

CEQA Exemption

Staff has determined that this action is exempt from the requirements of the CEQA since it is not a project with the potential to cause a significant effect on the environment. This determination is pursuant to the provisions and requirements of the CEQA of 1970, together with related State CEQA Guidelines and Title 14 of the California Code of Regulations, Sections 15061(b)(3).

Fiscal Impact

The elimination of Recology's obligation under the Franchise Agreement to provide the curbside HHW program will cause the City to incur additional costs. Through the term of the Franchise Agreement, the City has typically received a refund from the County based on resident participation. The average annual refund has been \$48,611. In addition to this amount, the City will incur new annual costs which are expected to average \$44,924. Together, the estimated lost revenue and increased costs annually amount to \$93,535. Staff recommends and Recology agrees to reimburse the City up to this amount

annually. This agreement will not have a direct fiscal impact for the City unless resident participation in the County Program exceeds prior year averages.

With approval of the Special Maximum Rate Adjustment of \$2.24 per month per single-family residential customer and 3.93% for all other categories of Service Recipients, there will be no direct fiscal impact to the City.

Prepared by: Alex Wykoff, (Former Acting) and Ursula Syrova, Environmental Programs Manager

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Deborah Feng, City Manager

Attachments:

- A Draft Resolution
- B Third Amendment to Franchise Agreement between City of Cupertino and Recology
- C Recology Maximum Rate for National Sword Letter dated January 28, 2020