



CITY OF
HAYWARD
HEART OF THE BAY

13

DATE: October 23, 2007
TO: Mayor and City Council
FROM: Director of Public Works
SUBJECT: Terms of Proposed Settlement with Waste Management of Alameda County for Non-Collection of Garbage during July Labor Dispute

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to:

1. Accept the offer from Waste Management of Alameda County (WMAC) to issue a three-week credit to all single-family residents, due to the July service disruptions resulting from the labor dispute between WMAC and Teamsters Local 70 drivers and operators, and
2. Prepare a settlement agreement with WMAC establishing that the City be reimbursed \$25,000 for staff time spent in July to monitor WMAC's performance as a result of the July service disruptions.

BACKGROUND

On July 2, WMAC implemented a lock-out of its Local 70 Teamster drivers and operators after the parties reached an impasse in their efforts to negotiate a new contract that would have taken effect July 1, 2007. The City Council reviewed status reports prepared by staff in July describing WMAC's performance in providing services to the City. Due to the lock-out, WMAC deployed other drivers to provide garbage collection to residents and businesses. However, service levels were diminished, particularly in the first two weeks of the lock-out, primarily because of an insufficient number of drivers to provide the requisite services for some of that period. WMAC also used replacement workers to accomplish operations at its Davis Street Transfer Station and Altamont Landfill, as other union workers honored the Teamsters' picket lines. In Hayward, residential recyclables continued to be picked up by Tri-CED without incident.

Staff monitored WMAC's performance on a daily basis and provided WMAC with a daily list of identified missed setouts, and identified other customers for which staff had confirmed that service was required. Complicating staff's efforts to monitor collection services were initial reports from single-family and commercial customers that they received automated or individual calls from WMAC advising that collection would be provided on a specified date but, ultimately, were not provided. Calls to the City from residents and businesses indicated their attempts to contact

WMAC required on-hold wait times of up to 30 minutes, and that they spoke with customer service representatives in other states that were not aware of the labor dispute. Yard trimmings collection was suspended for the first two weeks of the month of July, and residents were asked to store yard trimmings in their cart or double-bag the materials. During the latter portion of July, WMAC removed bulky item setouts from eligible residential addresses when reported by staff; Streets Division staff removed other bulky item setouts not eligible for collection by WMAC. WMAC also provided Saturday service to collect garbage from multi-family complexes and other commercial customers. Staff does not have sufficient data regarding WMAC's efforts to separately collect recyclables and organic materials from businesses, as required by the new contract, so no description of WMAC's services in July is available.

In response to these service concerns, the City issued two letters in early July. The letters and WMAC's responses are attached as Exhibit A. The first letter to WMAC, dated July 5, required that it provide written assurance that it would maintain quality service and meet all of the requirements of the Franchise Agreement during the lock-out implemented by WMAC. The second letter, dated July 11, was a Notice of Default and indicated that WMAC's decision to implement a lock-out before strike sanctions had been sought by that union did not meet the standard, as established in the Agreement, since the lock-out and service interruptions were within WMAC's control. WMAC's response, dated July 13, indicated that WMAC's inability to perform its obligations was caused by the labor unrest created by the union and its members.

DISCUSSION

WMAC's Offer to Issue Credits to Hayward Customers - WMAC has offered to issue a three-week credit to each single-family customer in the City of Hayward, and has indicated that it is prepared to issue that credit in its next quarterly bill for December through February. At the city's request, notices were placed in the prior quarterly bill to let customers know a credit would be forthcoming in the next bill. The company has asked that it receive the City's response by November 1 in order to include the credit in the next bill. WMAC has also offered to honor requests for credit it receives from businesses and multi-family dwelling property managers/owners. To facilitate requests for credit, City staff contacted all those customers who had called the City in July to report non-collection of garbage to advise each that WMAC has offered to issue credits on request. A total of 39 businesses were contacted; 13 reported requesting a credit, four plan to request a credit, 18 do not plan to request a credit, and four did not return staff's calls. A total of 18 multi-family residential property managers were contacted; nine responded indicating they requested a credit, four plan to request a credit, one does not plan to request a credit, and four did not return our calls.

Other Jurisdictions' Discussions with WMAC - The City of Oakland and the Castro Valley Sanitary District (CVSD) have also been in discussions with WMAC regarding the terms of a credit for their residents and businesses. Oakland staff confirmed that WMAC has offered its residents a four-week credit due to the July service disruption. Oakland staff has also indicated its intent to continue discussions regarding an unspecified amount of liquidated damages for service disruptions and administrative costs, due to the staff time required to monitor WMAC's performance. CVSD's General Manager has advised that WMAC has agreed to issue a credit to residents for the month of July, and that businesses may obtain a credit upon request for non-collection services. WMAC will also pay CVSD \$35,000 as reimbursement to CVSD for its administrative costs during July, and

\$150,000 toward Castro Valley's library fund. The latter amount is a donation and is not an admission of liquidated damages owed by WMAC. Staff from Albany, Livermore, and the Oro Loma Sanitary District has confirmed that its customers did not experience significant collection service delays in July so they will not be evaluating credits for their residents or businesses. Emeryville staff has explained that some WMAC customers were affected by the lockout, but that city is not considering any action at this time. A large condominium complex in that city may be pursuing reimbursement for non-collection costs, but Emeryville staff doesn't anticipate any city role in this request. Similarly, staff from San Ramon advised that WMAC issued a credit to some residents and businesses on request, and that no other action is planned.

Recommended Terms of Settlement with WMAC - Staff recommends that Council accept WMAC's offer for a three-week credit to all Hayward single-family homes. Some Hayward residential customers had already called WMAC asking for only one-week credit since for many that was the extent of their impact especially since Tri-CED continued to provide recycling services. Those requested credits were approved however if the settlement is agreed to all customers will be given the three-week credit. The rationale for the reduced credit for the City's residents compared to Oakland and Castro Valley is that the service disruptions were not as significant for the City's residents compared to reports received by staff from Oakland or CVSD. The impacts of non-collection were reduced due in part to staff's efforts described earlier. Staff has determined that its labor expenses related to monitoring WMAC's performance during the labor dispute totaled approximately \$25,000. WMAC has agreed to reimburse the city's estimated labor costs of \$25,000. WMAC has also agreed that they will pay franchise fees on the amount of the credits so that the city receives the same fees as it would have without the lockout. It is estimated the total amount of credits will exceed \$400,000; the franchise fee on that amount would be \$60,000. Staff believes these are reasonable settlement terms.

FISCAL IMPACT

As indicated above, the City would receive payment of \$25,000 for employee costs related to mitigating the impacts of the labor dispute. Also, the City will receive approximately \$60,000 in reimbursed franchise fees.

PUBLIC CONTACT

All Hayward residential customers received an initial notice in their last quarterly billing statements that there would be a credit and will receive the credit in their next quarterly statements. As noted, staff has contacted all commercial and multi-family customers who had any contact with staff during the lock-out to ensure they were aware of the potential for a credit.

SCHEDULE

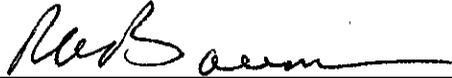
Assuming City Council approval, it is staff's intent to direct WMAC to issue a three-week credit to all single-family customers in the December – February quarterly bill. Staff will also finalize a settlement agreement with WMAC based on Council's decision on the recommended settlement.

Prepared by:



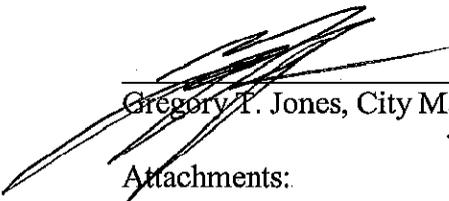
Alex, Ameri, Deputy Director of Public Works

Recommended by:



Robert A. Bauman, Director of Public Works

Approved by:



Gregory T. Jones, City Manager

Attachments:

Exhibit A: Two Letters from the City to WMAC, dated July 5, 2007, and July 11, 2007, and Two Response Letters from WMAC to the City, dated July 6, 2007, and July 16, 2007



CITY OF
HAYWARD
HEART OF THE BAY

Delivered By e-mail

July 5, 2007

Mr. Bob Angell
District Manager
Waste Management of Alameda County
172 – 98th Avenue
Oakland, CA 94612

Re: Provisions for Solid Waste and Recycling Services during the Lock-Out

Dear Mr. ^{Bob} Angell:

I am writing to request that Waste Management provide the City of Hayward with a written response on how your company intends to maintain quality service and meet all of the requirements of our Agreement during the lock-out of the Teamster drivers and operators that became effective July 2, 2007. Your response is required within two days of receipt, as established in Section 13.7, Right to Demand Assurances of Performance. As you are aware, if Waste Management fails or refuses to provide satisfactory assurances of timely and proper performance under the Agreement, such failure or refusal shall be an event of default for purposes of Section 13.1, Events of Default. Hayward elected officials, staff, residents, and businesses expect Waste Management to provide the services specified in the Agreement, regardless of the current situation. Such required services include, but are not limited to:

- Weekly collection of residential solid waste on the regularly scheduled collection day;
- Weekly collection of residential green waste on the regularly scheduled collection day;
- Collection of commercial solid waste, recyclables and organics, as agreed to between Waste Management and the customer, but at least weekly;
- Residential bulky waste clean-ups as scheduled;
- Delivery of carts to residents, and carts or bins to businesses;
- Compliance with the established hours of operation unless specifically approved by the City;
- Resolution of customer complaints within the timeframe established in the Agreement;
- Solid waste, recyclables, and green waste collection from City facilities.

DEPARTMENT OF PUBLIC WORKS
ADMINISTRATION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4700 • FAX: 510/583-3610 • TDD: 510/247-3340

Attachment A

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Waste Management, Inc.
Service Delivery During Lock-Out
July 5, 2007
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Include in your written response whether there are any requirements of the Agreement that Waste Management does not believe it can meet. In your response, please address the following specific questions:

Will any routes/service days be changed?

How will Waste Management accept and respond to increased call volumes?

How will Waste Management accept and respond to customer accounts, billing, and service disputes resulting from missed service?

Will Waste Management allow Hayward residents to drop off solid waste, yard trimmings, and bulky items at the Davis St. Transfer Station free of charge during the lock-out?

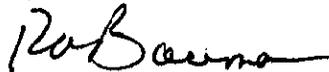
Will residential recycling services continue to be provided on the regular collection schedule or be impacted by the lock-out?

It is imperative that customer complaints and questions receive a full and timely response from Waste Management. Therefore, please let us know the most effective way for City officials and staff to forward customer complaints and questions to your organization.

As always, the City requires that we be kept informed in a timely manner of any developments affecting levels of service to our community. To assure this, please communicate with me directly and follow up any verbal communications in writing (e-mail) whenever possible. City staff reserves the right to share any information provided by Waste Management regarding the lock-out with our elected officials, residents, businesses, and our peers at other jurisdictions, as we deem prudent and necessary.

Thank you for your assistance in this manner.

Sincerely,



Robert A. Bauman
Director of Public Works

cc: Fran David, Acting City Manager
Alex Ameri, Deputy Dir. Public Works/Utilities

Lock Out - Let to WMAAC - 747



Robert W. Angell
District Manager

172 98th Avenue
Oakland, CA 94603

Rangell@wm.com

July 6, 2007

Robert A. Bauman
Department of Public Works Administration
City of Hayward
City Hall
777 B Street, 4th Floor
Hayward, CA 94541

Re: Response to Letter re Provisions for Solid Waste and Recycling Services during Labor Unrest

Dear Mr. Bauman:

This responds to your Letter dated July 5, 2007. First and foremost, Waste Management of Alameda County, Inc. ("WMAC") is committed to providing a level of service to meet the most urgent needs of the City of Hayward.

Pursuant to Section 13.7 of the Franchise Agreement, WMAC responds to the City's request for assurances of performances as follows:

- WMAC assures that it will collect residential solid waste on a weekly basis on regularly scheduled collection days.
- At this time, WMAC is unable to collect residential green waste on the regularly scheduled collection day and to provide bulky waste clean-up services as scheduled. WMAC is continuing to evaluate its resources and ability to fully reinstate green waste services to its residential customers and bulky waste clean-up services. WMAC will promptly notify the City when adequate resources are available to fully reinstate these services. Meanwhile, City residents can deliver their green waste to our Davis Street Transfer Station in San Leandro where we will accept it free of charge.
- WMAC assures that it will collect commercial solid waste and organics, as agreed to between WMAC and the customer, at least once weekly. At this time, we are unable to collect commercial recyclables, however, commercial customers in the City can deliver recyclable materials to the Davis Street Transfer Station where we will accept them free of charge.
- WMAC will provide cart service to residential customers and at this time limited bin service to commercial customers.
- Beginning Monday, WMAC intends to comply with the established hours of operation.

July 6, 2007

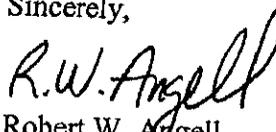
- WMAC assures that it will continue to make its best effort to resolve customer complaints within the timeframe established by the Franchise Agreement.
- At this time, WMAC is only able to collect solid waste from City facilities. WMAC is continuing to evaluate its resources and ability to fully reinstate recyclables and green waste services to City facilities. WMAC will notify the City when adequate resources are available to fully reinstate these services.

Please note that at this time there are no changes to the routes or service days due to the labor unrest. Further, WMAC has set-up various call centers to handle the increased customer call volume and respond to customer issues. On a similar note, WMAC intends to accept, respond to and resolve all issues related to customer accounts, billing, and service disputes resulting from missed service. Hayward residents will be allowed to drop off yard trimmings at the Davis Street Transfer Station free of charge during the labor unrest. Additionally, residential recycling services will continue to be provided on a regular collection schedule and will not be impacted.

By this letter, WMAC reiterates its notice of claim of force majeure event as an excuse from performance based on the "labor unrest" caused by Local 70 of the International Brotherhood of Teamsters ("Local 70"). The Local 70 contract expired at the end of June. Months before the Local 70 contract expired, WMAC tried negotiating a new contract with Local 70. Unfortunately, Local 70 would not respond to any of WMAC's proposals nor make any counterproposal of its own. Instead, Local 70 has threatened to strike since April and in written communications to its members Local 70 indicated that a strike is probable. In the face of an imminent strike by Local 70 directed at WMAC, which would have resulted in significant hardship to our customers, WMAC had little choice but to mobilize replacement drivers due to the size and complexity of the replacement work force required and the time necessary to deploy that work force. Were it not for the labor unrest and repeated strike threats created by Local 70 and directed at WMAC, WMAC would not have had to resort to its actions.

At this time, we are uncertain of the timing of this labor event given that Local 70 has refused to negotiate or to provide any counteroffer to our current contract proposal. We appreciate your patience in this matter we will keep you informed as to any changes in the services we are able to provide. Should you have any questions, please let me know.

Sincerely,



Robert W. Angell
District Manager

cc: Jesus Armas, City Manager, City of Hayward



CITY OF
HAYWARD
HEART OF THE BAY

Delivered Via E-Mail

July 11, 2007

Mr. Bob Angell
District Manager
Waste Management of Alameda County
172 - 98th Avenue
Oakland, CA 94612

Re: Notice of Default

Dear Mr. Angell:

Our July 5 letter to you requested a written response to provide the City with satisfactory assurances of timely and proper performance in accordance with Section 13.7, Right to Demand Assurances of Performance. While your July 6 letter offers some assurances, Waste Management has failed to provide required services and proper performance. City staff has confirmed that regularly scheduled garbage collection service from all single-family homes, multi-family dwelling complexes, businesses, and City facilities has not been provided. Extended collection hours have been approved, but staff continues to receive complaints from all sectors that regular weekly garbage collection services are not provided. Uncollected garbage from residences, multi-family dwellings and businesses is accumulating, and has created a public health and safety hazard.

Section 13.6 of your Franchise Agreement with the City provides an excuse from performance for a series of circumstances including, "... labor unrest or job actions ... and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder." Your company's lock out of Teamsters Local 70 drivers and operators, before strike sanctions had been sought by that union, does not meet the standard established in Section 13.6., since the lock out and the subsequent material interruptions in service to residents and businesses in the City of Hayward are exclusively within your company's control.

In addition, other services that your company has suspended until further notice include weekly collection of green waste from residents, bulky item collection from single-family homes, and separate collection of recyclables and organic materials from businesses. Since July 9, staff has received about 90 complaints from all sectors advising that garbage collection services have not

**DEPARTMENT OF PUBLIC WORKS
ADMINISTRATION**

777 B STREET, HAYWARD, CA 94541-5007

TEL: 510/583-4700 • FAX: 510/583-3610 • TDD: 510/247-3340

Attachment A

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Waste Management, Inc.
Service Delivery During Lock-Out
July 11, 2007
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been provided as scheduled. Complicating our efforts to monitor collection services are reports from single-family and commercial customers that they received automated or individual calls from your company advising that collection services will be provided on a specified date, but ultimately were not provided.

This letter serves as a Notice of Default, based on the failure to provide collection services as required under the terms of the Agreement, and must be corrected within the time provided under the Agreement. The City reserves its rights under the terms of the Agreement to take action as needed to assure the delivery of the required services, including but not limited to the remedies specified in Article 4 and Article 13 of the Agreement related to an Event of Default.

Sincerely,



Robert A. Bauman
Director of Public Works

cc: Acting City Manager, Frances David
City Attorney, Michael O'Toole

Lock Out - Lx la WMAC - 107



Robert W. Angell
District Manager

172 98th Avenue
Oakland, CA 94603
(510) 430-8509
Rangell@wm.com

July 13, 2007

Mr. Robert A. Bauman
Department of Public Works Administration
City of Hayward
777 B Street, 4th Floor
Hayward, CA 94541

Re: Waste Management of Alameda County, Inc.'s Response to City of Hayward's
July 11 Notice of Default

Dear ^{Bob} Mr. Bauman:

This letter responds to your letter dated July 11, 2007 entitled "Notice of Default." First and foremost, Waste Management of Alameda County, Inc. ("WMAC") is taking all reasonable measures to honor its commitment to meet the most urgent needs of the City of Hayward (the "City") and its obligations under the Franchise Agreement.

As mentioned in our response to your July 5 letter, due to the labor unrest created by Local 70 of the International Brotherhood of Teamsters ("Local 70"), WMAC is unable to provide the City with solid waste, recyclables, organics and other services at the standard levels required by the Franchise Agreement. WMAC is, however, diligently working towards and is close to providing the City with those services at the standard levels required by the Franchise Agreement. WMAC is currently providing residential solid waste services weekly on the regularly scheduled collection days; commercial solid waste and organics services at least once a week; limited cart service to residential customers; limited cart and bin services to commercial customers; and solid waste services to City facilities. Further, as I mentioned earlier our intent is to achieve full service levels for all commodities beginning Monday, July 16, 2007.

Although WMAC is unable to yet provide the City with solid waste, recyclables, organics and other services at the standard levels, WMAC does not concede that it is in default of the Franchise Agreement. WMAC reiterates its earlier notice of claim of force majeure event as an excuse from performance due to labor unrest created by Local 70. The Franchise Agreement provides that WMAC is not in default in the event of "labor unrest." The current situation falls squarely within the definition of "labor unrest," and thus, WMAC's inability to perform its obligations under the Franchise Agreement is excused. The relevant portions of the force majeure provision in Section 13.6 of the Franchise Agreement reads as follows:

"The parties shall be excused from performing their respective obligations hereunder and no liquidated damages shall be applicable thereto, if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, labor unrest or job actions, acts of any governmental agency (including judicial action), and other similar catastrophic events which are beyond the control of and not the

July 13, 2007

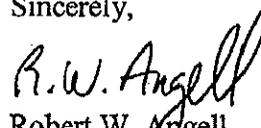
fault of the Party claiming excuse from performance hereunder... The partial or complete interruption or discontinuance of Contractor's services caused by one or more of the events described in this Article shall not constitute a default by Contractor under this Agreement."

WMAC's inability to perform its obligations under the Franchise Agreement was caused by labor unrest created by Local 70, and was beyond the control of and not the fault of WMAC. As you know, WMAC and Local 70 have been negotiating a new Local 70 contract for several months. Unfortunately, Local 70 refused to participate in those negotiations in good faith; ignoring WMAC's proposals and failing to make counterproposals of their own. Instead, Local 70 repeatedly threatened to strike, and accordingly, informed its members in writing that a strike was probable. A Local 70 strike would have resulted in significant hardship to customers and, more importantly, a public health and safety disaster in the City. In the face of an imminent Local 70 strike and the likely consequences of such a strike, WMAC had no choice but to mobilize and deploy a replacement labor force.

The fact remains that the current labor unrest was caused by job actions taken by Local 70, and was beyond the control of and not the fault of WMAC. WMAC did not create the labor unrest -- it merely reacted to it. Thus, the force majeure provision provided in Section 13.6 of the Franchise Agreement applies to this situation, and as such, WMAC's inability to perform its obligations under the Franchise Agreement is excused.

Again, WMAC is diligently working towards and is close to providing the City with solid waste, recyclables, organics and other services at the standard levels required by the Franchise Agreement. We appreciate your patience in this matter and, should you have any questions, please let me know.

Sincerely,



Robert W. Angell
District Manager



DRAFT

UK
10/19/07

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT WITH WASTE MANAGEMENT OF ALAMEDA COUNTY (WMAC) FOR NON-COLLECTION OF GARBAGE DURING THE JULY LABOR DISPUTE

WHEREAS, in July, 2007, WMAC implemented a lock-out of its Local 70 Teamster drivers and operators after the parties reached an impasse in their efforts to negotiate a new contract; and

WHEREAS, the lock-out resulted in diminished levels of service to Hayward customers, particularly during the first two weeks of July, requiring daily monitoring by City staff; and

WHEREAS, WMAC has offered the following settlement:

1. To issue a three-week credit to each single-family customer in the City of Hayward;
2. To honor requests for credit that it receives from businesses and multi-family dwelling property managers/owners in the City of Hayward;
3. To reimburse the City \$25,000 for staff time spent to monitor WMAC's performance during the lock-out; and
4. To pay franchise fees on amounts of credits so that the City receives the same fees as it would have without the lock-out.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to execute a settlement agreement containing the above terms, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward