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DATE: February 16, 2010

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Introduction of an Ordinance Adding Section 5-1.28 through 5-1.32 to the Hayward Municipal Code to Authorize Collection of Delinquent Garbage Bills by Placement on the County Tax Rolls

RECOMMENDATION

That Council: a) conducts a hearing and considers introduction of an Ordinance amending Chapter 5, Article 1 of the Hayward Municipal Code relating to collection of delinquent charges for solid waste collection and disposal by adding Section 5-1.28 through 5-1.32 to the Hayward Municipal Code to authorize collection of delinquent garbage bills by placement on the County tax rolls; and b) adopts a resolution authorizing the City Manger to negotiate and execute an amendment to the City's Franchise Agreement with Waste Management of Alameda County, allowing collection of delinquent garbage accounts by placing them on the County Property Tax rolls.

BACKGROUND

Council approved a new Franchise Agreement with Waste Management of Alameda County (WMAC) on January 9, 2007. The Agreement establishes that WMAC is responsible for preparing, mailing and collecting bills for services provided. WMAC issues bills for single-family homes on a quarterly basis, in advance of services provided; bills for multi-family dwelling complexes and all businesses are issued monthly, after the services have been provided. Residential bills are issued to the initiator of the service, which is the property owner in owner-occupied homes, but is the tenant in a large number of rental homes in Hayward. The City's Municipal Code establishes that residential property owners are ultimately responsible for payment of garbage and recycling services, although this is not addressed in our Franchise Agreement and WMAC has not previously pursued collection of delinquent tenant bills from property owners. This proposed ordinance is intended to provide a means to collect from both owner-occupied and tenant-occupied residential customers who have delinquent bills.

Under the Franchise Agreement, WMAC is authorized to use several methods to collect payments from service recipients or property owners for accounts that are 30 days past due. Efforts to obtain payments from delinquent accounts include issuing late payment notices; imposing late fees at 1.5% on past due balances after billing and providing written notice that the account is overdue; placing

telephone requests for payments; and utilizing services of collection agencies. For health and safety reasons, WMAC is required by the Franchise Agreement to continue regular weekly collection of garbage and recycling services for residential customers, even if it is unable to obtain payment from either single- or multi-family residences for past due bills. Commercial bin or roll-off services for businesses may be terminated, typically after 90 days, if WMAC is unable to secure payment. On request from some delinquent commercial bin and roll-off customers, WMAC has reduced service for a specified period until the customer has paid its past due bill, after which regular collection service resumes.

DISCUSSION

The number of residential customer accounts with delinquent garbage bills has increased over the past few years, due in large part to the downturn in the economy. The total number of delinquent residential customer accounts from 2007 through 2009 is about 2,740, many of whom are tenants, rather than owner-occupied units. The total value of bad debt as carried on WMAC's books and incurred as a result of the delinquent residential accounts for the past three years is about \$1,244,285. Even assuming not all of this bad debt can be recovered, partial recovery could add as much as \$180,000 to City revenues from WMAC.

WMAC has recently requested that the City consider implementing a procedure that has effectively been used in other jurisdictions to collect delinquent residential garbage bills as a special assessment on property tax records. Staff is supportive of this request both because it will recover some of the current lost franchise revenue to the City. It will also provide a strong collection tool going forward so as to avoid accruing large amounts of delinquencies as currently exist.

At the beginning of this month, WMAC mailed notices to all residential property owners and tenants requesting payment for garbage bills that are at least 90 days delinquent. Included in the payment requests were any previous amounts written off as bad debt since the start of the new contract on June 1, 2007. The letter indicated that, if not paid, further notices will be mailed, and if not paid by June 1, additional collection procedures will result. Letters were only mailed to current property owners, not previous owners. Properties in foreclosure were also excluded. About half of these letters were to owner-occupied properties. No property owner was being asked to pay a bill owed by a past tenant. Only delinquent accounts of current tenants were mailed to property owners. Each letter also provided information regarding the City's municipal code and informed property owners that they were responsible for delinquent bills, even if the owner had provisions requiring payment by tenants. This information was included in the letter because some landlords may not be aware of their responsibility and may not be aware that their tenant has not paid WMAC's bill.

If Council approves the proposed ordinance, three additional letters and delinquent invoices will be mailed in March, April, and May to property owners and tenants. These letters will include information describing the collection of delinquent charges by assessment on the Alameda County property tax rolls if not paid. The May letter will also indicate that, prior to placing delinquent charges on the tax rolls, property owners will be entitled to an administrative hearing to allow them to raise any objections to the imposition of the charges. The hearing officer will be the City Manager or his designee. The final updated list of property owners for whom delinquent charges will be placed on the property tax rolls will be submitted for Council's approval in July and

forwarded by Finance Department staff to the Alameda County Tax Assessor's Office in August. Also if the ordinance is approved, a similar assessment process will occur annually and based on the experience of other cities we would expect to see a reduction in the actual number of delinquent accounts that need to be processed each year.

Similar letters have not been issued to owners of commercial property because the City's Municipal Code does not include any requirement that commercial property owners are responsible for delinquent garbage bills. However, WMAC is responsible for collection of past due accounts using the methods identified previously, and WMAC may terminate commercial service after 90 days. For this reason, the number of delinquent commercial accounts is only a fraction of the delinquent single-family accounts.

Other jurisdictions in Alameda County also report increases in the number of delinquent residential garbage bills. The jurisdictions that have initiated assessments on residential property tax bills over the past five years or more include the cities of Livermore, Newark and San Leandro. The Oro Loma Sanitary District implemented these provisions beginning January 2010. The City of Berkeley also has been placing delinquent bills on property tax rolls for many years, although they also do the billing and provide service with City forces. The City of Alameda assesses delinquent garbage bills for residential and commercial properties on property tax rolls, and the Castro Valley Sanitary District is authorized to do so, but has not yet initiated any assessments.

The City of Oakland is unique in that it assumes responsibility for all residential, commercial bin and roll-off accounts that are 90 days delinquent pays WMAC for the delinquent amounts owed, and initiates its procedures to secure payment for amounts owed. Other jurisdictions, including the cities of Dublin and Union City, have arranged with the Alameda County Tax Assessor's Office to include the charge for a base level service on all property taxes, with services above that minimum level billed by the franchisee.

ECONOMIC IMPACT

The amount that would be assessed on the property tax rolls would include the total delinquent amount since June 1, 2007, including late fees; the City's administrative fee of \$50.00 per assessor's parcel to cover the costs to process the assessment; and the County's fee of 1.7 % on each assessment. The City's administrative fee would cover staff costs to provide the final list of property owners with delinquent garbage bills to the Alameda County Tax Assessor's Office; to deposit the payments from the Tax Assessor's Office; to record the City's share of franchise fees; and to issue a check to WMAC for the balance. Similar to other special assessment administrative hearings, those requesting a hearing would be required to make a deposit of \$50. If the charges are reversed, the deposit would be refunded; if not, it would be applied to reduce the outstanding assessment.

FISCAL IMPACT

As described earlier in this report, staff estimates the additional franchise fee revenue that would be due the City from the collection of currently delinquent garbage bills could total about \$180,000.

Of the total 15 % due in franchise fees, about 12.5 % would be allocated to the General Fund, and about 2.5 % would be allocated to the Stormwater Fund.

Applying delinquent garbage bills to the property tax bills as a regular annual collection tool will help assure that cash reaches the City's bank accounts and accrues interests as quickly as possible. And, it will be a significant deterrent to accruing large amounts of delinquent dollars in the future.

PUBLIC CONTACT

Notice of the public hearing was published in the *Daily Review* on January 28, and February 7, 2010. The City's webpage also included notice of the public hearing under "*What's New.*" Information regarding the letters to property owners was included in the City Managers Weekly Report. In addition to the letters, WMAC has mailed a City-designed postcard to all residential property owners informing them of their responsibility to pay for garbage service if their tenants do not and indicating the public hearing would consider special assessment procedures. The postcard also indicates that the delinquent accounts will cover back to July 1, 2007.

SCHEDULE

Effective date of Proposed Ordinance	March 26, 2010
One letter mailed each month by WMAC to residential and commercial property owners and tenants with delinquent garbage bills describing the ordinance provisions	March, April & May 2010
Administrative hearings as necessary	June 2010
Final list of property owners with delinquent garbage bills submitted for Council approval	July 20, 2010
Provide final list to Revenue Division for remittance to Alameda County Tax Assessor's Office	July 30, 2010

Prepared by: Alex Ameri, Deputy Director of Public Works

Recommended by: Robert Bauman, Public Works Director

Approved by:

A handwritten signature in black ink, appearing to read "Gregory T. Jones", is written over a horizontal line. The signature is stylized and includes the word "for" written in a cursive script to the right of the main signature.

Gregory T. Jones, City Manager

Attachments:

Attachment I: Ordinance Adding Section 5-1.28 through 5-1.32 to the Hayward Municipal Code to Authorize Collection of Delinquent Garbage Bills by Placement on the County Tax Rolls

Attachment II: Resolution Authorizing the City Manger to Negotiate and Execute an Amendment to the City's Franchise Agreement with Waste Management of Alameda County Regarding Non-Payment of Garbage Bills for Placement on Tax Rolls

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 1 OF
THE HAYWARD MUNICIPAL CODE RELATING TO
COLLECTION OF DELINQUENT CHARGES FOR SOLID
WASTE COLLECTION AND DISPOSAL

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES ORDAIN AS FOLLOWS:

Section 1. Upon the adoption of this ordinance, Sections 5-1.28 through 5-1.32, Article 1, Chapter 5 of the Hayward Municipal Code, relating to the collection of delinquent charges for solid waste collection and disposal services, are hereby enacted to read as follows:

ARTICLE 1

SOLID WASTE, RECYCLABLE MATERIALS AND ORGANIC MATERIALS
MANAGEMENT

Section	Subject Matter
5-1.00	PURPOSES AND INTENT
5-1.01	DEFINITIONS
5-1.10	SUBSCRIPTION TO SERVICE REQUIRED; MINIMUM WEEKLY SERVICE
5-1.11	RATES CHARGED BY FRANCHISEE
5-1.12	RATE SUBSIDY FOR LOW-INCOME SINGLE FAMILY RESIDENTS
5-1.13	COLLECTION AND REMOVAL
5-1.14	CONTAINERS: WATERTIGHT AND SUFFICIENT CAPACITY
5-1.15	COLLECTION LOCATION, FREQUENCY, PLACEMENT AND RETRIEVAL FROM SINGLE-FAMILY DWELLING UNITS
5-1.16	COLLECTION LOCATION, FREQUENCY, PLACEMENT AND RETRIEVAL FROM MULTI-FAMILY DWELINGS, PREMISES AND COMMERCIAL PREMISES

- 5-1.17 TITLED OWNER RESPONSIBLE FOR COLLECTION
- 5-1.18 FAILURE TO INITIATE SERVICE OR TO PROVIDE SUFFICIENT CONTAINERS
- 5-1.19 EXCEPTIONS TO MANDATORY SUBSCRIPTION
- 5-1.20 SOLID WASTE RECEPTACLE, PUBLIC PLACES
- 5-1.21 DISPOSAL OTHER THAN ON PREMISES WHERE PRODUCED; EXCEPTIONS
- 5-1.22 BURYING OR DUMPING PROHIBITED
- 5-1.23 BURNING OF SOLID WASTE PROHIBITED
- 5-1.24 OWNERSHIP OF COLLECTED MATERIALS
- 5-1.25 COLLECTION, TRANSFER, AND DISPOSAL BY AUTHORIZED FRANCHISEE
- 5-1.26 LIMITATIONS TO FRANCHISEES' SCOPE OF SERVICES
- 5-1.27 SPACE TO COLLECT AND LOAD RECYCLABLE MATERIALS AND ORGANIC MATERIALS
- 5-1.28 COLLECTION OF DELINQUENT CHARGES ON TAX ROLL
- 5-1.29 ADMINISTRATIVE HEARING PROCESS
- 5-1.30 ACCOUNT AND REPORT OF DELINQUENT CHARGES
- 5-1.31 NOTICE OF REPORT
- 5-1.32 REPORT BY DIRECTOR OF FINANCE

SEC. 5-1.28 COLLECTION OF DELINQUENT CHARGES ON TAX ROLL.

The City may elect to have any delinquent charges for unpaid rates collected on the property tax roll in the same manner as, by the same person, and at the same time as, and together with and not separately from, general taxes.

If a determination is made to enforce collection of delinquent charges by assessment on the Alameda County property tax roll, an administrative hearing shall be conducted in accordance with the provisions of Section 5-1.29 below. The amount to be assessed upon the property tax roll shall include all delinquent amounts as of June 1 of

each year, the actual costs of assessment and the collection of the delinquent charges on the property tax roll and an administrative fee in the amount of \$50.00 per assessor's parcel to cover the costs of processing the assessment.

SEC. 5-1.29 ADMINISTRATIVE HEARING PROCESS. Prior to placing delinquent charges on the Alameda County property tax roll for collection, written notice shall be given to the owner of the property serviced by the franchisee of the past due charges and the right to an administrative hearing. The purpose of the administrative hearing is to provide an opportunity for the property owner to raise any objections to the imposition of the charges on the property tax roll. The City Manager, or his or her designee, shall act as the hearing officer. The hearing officer may modify or confirm the proposed charges, as deemed equitable, in his or her sole discretion.

SEC. 5-1.30 ACCOUNT AND REPORT OF DELINQUENT CHARGES. The Public Works Director shall keep an account of the delinquent charges and shall render an annual itemized report in writing to the City Council. The City Council shall review and confirm the annual report of delinquent charges by way of resolution.

SEC. 5-1.31 NOTICE OF REPORT. The City Clerk shall post a copy of the report and list of delinquent charges on the bulletin board designated for the posting of agendas for City Council meetings, together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council for confirmation by way of resolution. Notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and the first publication of the notice shall be made and completed at least ten days before the time the report is considered by the City Council.

SEC. 5-1.32 REPORT BY THE DIRECTOR OF FINANCE. After City Council confirmation of the annual report, a copy shall be given to the City Director of Finance, who may receive the list of delinquent charges at any time after confirmation and until a list of unpaid liens/assessments is sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection and enforcement of City taxes are hereby made applicable to such liens or assessments and the lien or assessment shall have the priority of the taxes with which it is collected."

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2010, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2010, by the following votes of the said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE FRANCHISE AGREEMENT BETWEEN THE CITY OF HAYWARD AND WASTE MANAGEMENT OF ALAMEDA COUNTY FOR SOLID WASTE, RECYCLABLE MATERIALS AND ORGANIC MATERIALS REGARDING COLLECTION OF DELINQUENT BILLS THROUGH THE PROPERTY TAX ROLLS

WHEREAS, the City's Franchise Agreement authorizes Waste Management of Alameda County (WMAC) to prepare, mail and collect bills for solid waste services it provides residents and businesses; and

WHEREAS, WMAC is authorized to collect payments from service recipients or property owners for accounts that are 30 days past due; and

WHEREAS, the number of residential customer accounts that have delinquent WMAC bills has increased over the past few years so that the total value of the bad debt has become significant.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized to negotiate and execute an amendment to the Franchise Agreement Between the City of Hayward and Waste Management of Alameda County for Solid Waste, Recyclable Materials and Organic Materials Services regarding collection of past due garbage and recycling bills through the imposition of the delinquent charges on property tax rolls, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: CITY COUNCIL:

MAYOR:

NOES: CITY COUNCIL:

ABSTAIN: CITY COUNCIL:

ABSENT: CITY COUNCIL:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward