

DATE: April 6, 2010

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Authorization for City Manager to Execute an Amendment to the City's Franchise Agreement with Waste Management of Alameda County (WMAC) and Approval of City Ordinance Section 5-1.28 through 5-1.32 Authorizing Collection of Delinquent Garbage Bills by Placement on the County Tax Rolls (Introduced 16 February)

RECOMMENDATION

That Council adopts:

1. Ordinance Section 5-1.28 through 5-1.32 Authorizing Collection of Delinquent Garbage Bills by Placement on the County Tax Rolls that had been introduced on February 16, 2010; and
2. The attached resolution authorizing the City Manager to 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 Tax rolls.

BACKGROUND

Council conducted a hearing at its February 16, 2010, meeting to consider introduction of an Ordinance that would permit collection of delinquent charges for garbage collection and disposal by placement on the tax rolls. At that meeting, Council also directed staff to negotiate an amendment to the Franchise Agreement with Waste Management of Alameda County (WMAC) and to ensure the agreement included the process whereby property owners would be notified when their tenants are delinquent in payment of their garbage bills, and would be kept informed regarding their ultimate responsibility for garbage service.

At its February 23, 2010 meeting, Council postponed adoption of the Ordinance introduced until consideration of the Franchise Agreement Amendment. This report describes the recommended provisions of the amendment to the Franchise Agreement and summarizes the comments staff has received from property owners regarding the Ordinance. A copy of the February 16, 2010, Council

Report can be found at <http://www.hayward-ca.gov/citygov/meetings/cca/2010/cca021610.htm> . The information included in several sections of the February 16 Council Report, including the Economic Impact, Fiscal Impact, and Schedule require no changes and, thus, has not been restated in this report.

DISCUSSION

Proposed Amendment Provisions - The proposed amendment to the Franchise Agreement requires that WMAC record if the service requestor is a tenant or owner for all new accounts initiated by single-family customers and individually billed multi-family customers with cart service (residential cart customers) beginning with the effective date of the amendment. Doing so will allow WMAC and City staff to monitor the number of delinquent residential cart customers, whether tenants or property owners. WMAC will be required to mail notices to all property owners indicating new service requests initiated by their tenants and reminding those owners of their ultimate responsibility for all delinquent bills, as established in the Municipal Code.

Beginning with the quarterly bill for June through August 2010, and each bill thereafter, WMAC will determine which residential cart customers are ninety days or more delinquent in payment of their bill, and will mail a bill so advising each such customer. WMAC will also mail a notice to each affected property owner, if not the residential cart customer, advising that its tenant has incurred a bill that is ninety days delinquent. All such bills and notices are required to be mailed at the same time. The purpose of the notices to property owners is to provide sufficient information and notification to correct the delinquent bill prior to WMAC requesting a special assessment on tax rolls. The City will have the right to review and revise the content and layout of the notice to property owners, and those revisions must be incorporated in the notice prior to mailing. WMAC agrees that it will use the most current data of property owners compiled by the Alameda County Tax Assessor's Office when mailing the notices.

Similar to the special assessment process being used this year (also being used by other cities), WMAC will be required to prepare and mail three notices to residential cart customers and affected property owners regarding bills that are past due at least 120 days. If payment is not received, WMAC will notify the City of non-payment of all delinquent accounts by mid-May, in time for an annual administrative hearing each year and later placement as a special assessment on tax rolls. WMAC will be required to exercise reasonable efforts to achieve collection of the bill, as described in the Franchise Agreement. Some of those efforts include imposing late fees at 1.5% on past due balances after billing and telephone requests for payments. The City will reimburse WMAC for delinquent payments placed on the tax roll, less the Franchise fees due the City, upon collection of those payments from the property owner and within 30 days of receipt by the City. WMAC will also be required to reimburse the City for all reasonable expenses it incurs to facilitate collection of delinquent payments including, but not limited to, staff and materials.

Resolution of Delinquent Bills; Rent Control Provisions - As indicated in the February 16 Council Report, WMAC mailed notices in early February to all residential property owners and tenants requesting payment for garbage bills that are at least ninety days delinquent. Payment requests included previous amounts written off as bad debt since the start of the new contract on

June 1, 2007. Staff continues to recommend that going back to the start of the new contract is appropriate due to the large dollar amount of bad debt from existing tenants. Unlike some other cities, such as Newark, that have instituted special assessment programs, no property owner is required to pay a bill owed by a past tenant. Instead, property owners are required to provide WMAC with documentation to substantiate the date that the previous tenant vacated the residence. WMAC has acknowledged that its list includes past tenants with delinquent bills because it had not received requests to stop service. The City has instructed WMAC to ensure that its call center staff accepts such documentation from property owners and removes these delinquent bills. The City Attorney has advised that the City's rent control ordinance allows a landlord to include the cost of garbage collection in a tenant's rent. In order to pass along said costs, a landlord is required to provide all affected tenants with documentation supporting the level of rent increase desired to recover the cost of garbage collection. There are about 1,300 dwelling units throughout Hayward subject to rent increase limitations, excluding mobile homes.

To date, a total of 453 property owners or tenants have paid their delinquent bills. Of the 2,578 currently delinquent accounts, 184 accounts have been cancelled because those bills were incurred by previous tenants. In addition, 244 accounts have been added to the delinquent list because they are now more than 90 days past due. A total of 36 other delinquent bills have been excluded because they are owned by a bank or the California State Department of Transportation (Caltrans). WMAC has provided Caltrans with information in an effort to collect from its ten past tenants. The present total delinquent balance is approximately \$1.2 million and will change further as some bills are paid.

Subsequent Notices and Administrative Hearing Process - Three additional notices with delinquent invoices will be mailed to property owners and tenants in early April, late April, and mid-May. These notices to property owners will include specific information describing the potential collection of delinquent charges by assessment on the Alameda County tax rolls if not paid. The May notice 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. As previously reported, the hearing officer will be the City Manager or his designee. However, staff may recommend utilizing the same outside contract hearing officer used for other special assessment procedures, depending on the number of hearing requests received.

The final updated list of property owners to be placed on the 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. A similar assessment process will occur annually. Based on the experience of other cities, staff would expect to see a reduction in the actual number of delinquent accounts that need to be processed each year.

PUBLIC CONTACT

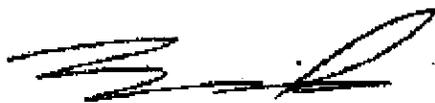
In addition to comments and responses provided at the February 16 hearing, staff has received visits and phone calls from approximately twenty individuals. All were property owners who asked questions regarding their obligation to pay for delinquent bills, most of which were incurred by their

tenants, nearly half of whom were previous tenants. Staff advised each property owner that delinquent bills from previous tenants may be excluded, subject to documentation to substantiate the date that the tenant vacated the residence. Only one query was received from the approximate 1,500 owner-occupants with delinquent bills. Staff received calls from property owners who did not get a letter regarding a delinquent bill, but who had questions about the proposed Ordinance, as described in the post card they received. In each of those instances, staff summarized the Council Report and mailed a copy of the report. Nearly all of the callers indicated their intent to place the garbage account in their name and include that charge in the rent. As during the hearing, a few calls were from property owners who simply objected to the process of being assessed now for past delinquencies and expressed concern about the difficulty of collecting from their tenants if they, as owners, must pay delinquent bills. WMAC indicated they received a one day high-call volume of 150 calls on the special toll-free number just after the letters and post cards went out. However, calls are now much more infrequent and low in number.

Prepared by: Alex Ameri, Deputy Director of Public Works

Recommended by: Robert Bauman, Public Works Director

Approved by:



Fran David, Acting City Manager

Attachments:

- Attachment I: First Amendment to the City's Franchise Agreement with Waste Management of Alameda County
- Attachment II: Resolution Approving the Amendment to the City's Franchise Agreement with Waste Management of Alameda County Regarding Non-Payment of Garbage Bills for Placement on County Tax Rolls
- Attachment III: An Ordinance Amending Chapter 5, Article 1 of the Hayward Municipal Code Relating to Collection of Delinquent Charges for Solid waste Collection and Disposal

FIRST AMENDMENT TO FRANCHISE AGREEMENT BETWEEN THE CITY OF HAYWARD AND WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. FOR SOLID WASTE, RECYCLABLE MATERIALS AND ORGANIC MATERIALS SERVICES REGARDING COLLECTION OF DELINQUENT BILLS THROUGH THE PROPERTY TAX ROLLS

THIS FIRST AMENDMENT, effective this _____ day of _____, 2010, is by and between **Waste Management of Alameda County, Inc.**, a California corporation, ("**Contractor**") and the **CITY OF HAYWARD**, a California municipal corporation ("**City**"), and amends that certain FRANCHISE AGREEMENT between Contractor and City for Solid Waste, Recyclable Materials and Organic Materials Services which was entered into on the 9th day of January, 2007 (hereinafter "**Agreement**").

RECITALS:

WHEREAS, Contractor, is currently providing services pursuant to the above-referenced Agreement for single-family and multi-family residential and business customers; and

WHEREAS, Contractor and City desire to now amend the Agreement to authorize and provide for the collection of bills that are delinquent for one hundred twenty (120) days or greater through the inclusion of said bills as a special assessment on the Alameda County property tax rolls;

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter recognized, Contractor and the City agree to amend the Agreement as follows:

7.2 Billing

7.2.1 General

Section 7.2.1 is amended to add the following provision as Section 7.2.1. (a) Special Assessment Procedure.

In order to initiate collection of delinquent charges for residential solid waste collection and disposal by special assessment on the County tax rolls, the Contractor shall perform several tasks. Beginning with the effective date of this amendment, the Contractor shall record each new Single-Family Customer and individually billed Multi-Family Customer (Residential Cart Customer) as a tenant or owner of the real property at which services are provided by Contractor. Monthly, Contractor shall mail notices to all property owners regarding new service requests from their tenants and reminding the property owners of their ultimate responsibility for all delinquent bills, as established in the City Municipal Code.

Beginning with the quarterly bill for June-August 2010, and each bill thereafter, the Contractor shall determine which Residential Cart Customers are ninety (90) days or more delinquent in payment of their bill. Contractor shall prepare and mail a bill to each such

Cart Customer indicating that it has incurred a bill that is ninety (90) days delinquent. Contractor shall also mail a notice to each affected property owner, if not the Residential Cart Customer, advising that its tenant has incurred a bill that is ninety (90) days delinquent. All such bills and notices shall be mailed at the same time. The purpose of the notices to property owners is to provide sufficient information and notification to correct the delinquent bill prior to Contractor requesting use of special assessment. The City shall have the right to review and revise the content and layout of the notice to property owners, and such revisions shall be incorporated by the Contractor prior to mailing. Contractor agrees that it will use the most current data of property owners compiled by the Alameda County Tax Assessor's Office when mailing such notices.

Contractor will mail three notices to delinquent Residential Cart Customers and each affected property owner. If payment is not received, the Contractor shall notify the City of such non-payment in time for an annual administrative hearing on all delinquent accounts by mid-May of each year and later placement as a special assessment on the tax rolls. A bill must be past due at least one hundred twenty (120) days and the Contractor shall exercise reasonable efforts as described in this Section to achieve collection of the bill prior to passing it on to the City for placement on the tax rolls. City shall reimburse Contractor for delinquent payments that are placed on the tax roll, less the franchise fees due the City, upon collection of those payments from the property owner and within thirty (30) days of receipt by the City. Contractor shall reimburse City for all reasonable expenses it incurs to facilitate collection of delinquent payments including, but not limited to, staff and materials.

Except as amended herein, all provisions and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Contractor has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

**CONTRACTOR:
WASTE MANAGEMENT OF ALAMEDA
COUNTY**

By: _____

Its: _____

Dated: _____

RECOMMENDED

CITY OF HAYWARD

By: _____
ROBERT A. BAUMAN
Director of Public Works

By: _____
GREGORY T. JONES
City Manager

Dated: _____

Approved as to form and procedure:
MICHAEL S. LAWSON
CITY ATTORNEY

Attest: _____

MAUREEN A. CONNEELY
Assistant City Attorney

MIRIAM LENS
City Clerk

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-___

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST 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 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 cart customers 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 execute the First 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 Delinquent Bills through the Property Tax Rolls, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

Page 1 or Resolution No. 10-___

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

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 FRANCHISEE=S 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