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**Title:** CONSIDER ADOPTING A RESOLUTION AUTHORIZING AND COMMANDING THE ISSUANCE OF A SUBPOENA, TO BE ISSUED BY THE CITY CLERK, DIRECTED TO USA WASTE OF CALIFORNIA, INC., COMPELLING THE PRODUCTION OF DOCUMENTS AND OTHER INFORMATION TO THE CITY WHICH ARE NECESSARY FOR THE ORDERLY TRANSITION OF COMMERCIAL AND RESIDENTIAL SOLID WASTE AND RECYCLABLE SERVICES AND AUTHORIZE THE MAYOR TO EXECUTE THE SAME

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**Attachments:** 1. (USA WASTE) Resolution to Authorize Council's Subpoena Power RE Transfer Information, 2. (USA WASTE) Legislative Subpoena RE Transfer Information, 3. File Summary

Date	Ver.	Action By	Action	Result
4/3/2018	1	City Council		

**Report to Mayor and City Council**

Tuesday, April 03, 2018

Discussion

**SUBJECT:**

**CONSIDER ADOPTING A RESOLUTION AUTHORIZING AND COMMANDING THE ISSUANCE OF A SUBPOENA, TO BE ISSUED BY THE CITY CLERK, DIRECTED TO USA WASTE OF CALIFORNIA, INC., COMPELLING THE PRODUCTION OF DOCUMENTS AND OTHER INFORMATION TO THE CITY WHICH ARE NECESSARY FOR THE ORDERLY TRANSITION OF COMMERCIAL AND RESIDENTIAL SOLID WASTE AND RECYCLABLE SERVICES AND AUTHORIZE THE MAYOR TO EXECUTE THE SAME**

**I. SUMMARY**

USA Waste of California, Inc. ("Waste") has refused to provide to the City vital documents, records, and other information required to assure the orderly transition of commercial and residential solid waste and recyclable services from Waste to Waste Resources, Inc. ("WRI").

Accordingly, staff and the Office of the City Attorney request that the City of Carson exercise its subpoena powers, as granted by the Government Code, to compel production

of this vitally needed information.

## II. RECOMMENDATION

### TAKE the following ACTION:

WAIVE further reading and ADOPT Resolution No. 18-046, "A RESOLUTION OF THE COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AUTHORIZING AND DIRECTING THE ISSUANCE OF SUBPOENAS COMPELLING THE PRODUCTION OF DOCUMENTS AND OTHER INFORMATION FROM USA WASTE OF CALIFORNIA, INC. AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME."

## III. ALTERNATIVES

1. TAKE no action of this item.
2. TAKE such other action as the City Council deems appropriate consistent with the requirements of law.

## IV. BACKGROUND

### A. General

As the Council is aware, the City issued its "Request for Proposals for Integrated Solid Waste Management Services (RFP P171-19)" on July 20, 2017 ("RFP"). The City received multiple proposals from competing waste haulers in response to the RFP and, ultimately, the City awarded an exclusive commercial and residential franchise to WRI.

The City and Waste currently have in place two franchise agreements: (1) Waste Management Commercial-Industrial Franchise Agreement, and (2) Waste Management Residential Franchise Agreement (collectively, the "Agreements"). These Agreements, according to their terms, require Waste to cooperate with the City in the event of a *Transition to the Next Company*:

If the transition of services to another company occurs by reason of the expiration of the term, default, termination, or otherwise, [Waste] shall cooperate with the City and any subsequent solid waste enterprise to assist in the orderly transition that will include, but not limited to, [Waste] providing route lists and billing information.

Furthermore, Waste must always be in *Compliance with Municipal Code*:

[Waste] must comply with all applicable provisions of the Municipal Code of the City, and with all amendments to those provisions during the term of this Agreement.

Carson Municipal Code § 5229.2 sets forth "Seamless Service Requirements" for any change in control of the City's collection of solid waste and recyclable materials. As a

result, these Agreements require Waste to fully cooperate with the City to ensure the smooth transition of the collection of solid waste and recyclable materials in the City from Waste to WRI.

Waste has recently served the City with a Summons and *Verified Petition for Writ of Mandate and Other Extraordinary Relief and Complaint for Declaratory Relief and Injunctive Relief* (the "Petition"). The Petition demands the City set aside the Council's December 5, 2017 vote to ultimately award an exclusive franchise to WRI to provide integrated solid waste management services to the City.

Waste is now using the Petition as a pretext to breach its duty of cooperation by refusing to provide the documents, records, and other information required to assure the orderly transition of commercial and residential solid waste and recyclable services from Waste to WRI.

On March 26, 2018, the City facilitated a meeting (the "Meeting") between City Staff, WRI, and Waste to transfer documents, records, and information required for the pending change in control from Waste to WRI for collection of commercial and residential solid waste and recyclable materials in the City. At the Meeting, and in violation of the Agreements, Waste refused to provide the documents, records, and other information required to assure the orderly transition of commercial and residential solid waste and recyclable services from Waste to WRI.

The City has the authority to require Waste to provide the documents, records, and other information required to assure the orderly transition of commercial and residential solid waste and recyclable services from Waste to WRI. In particular, the City requires that Waste promptly provide the following the documents, records, and other information:

- a list of all residential and commercial accounts pertaining to the Agreements; and
- a description of service levels and specifications for all residential and commercial accounts pertaining to the Agreements; and
- a list of all route schedules for both residential and commercial services pertaining to the Agreements; and
- a description of all route schedules for both residential and commercial services pertaining to the Agreements; and
- a Transition Plan regarding "cart-and-bin pickup"; and
- confirmation Waste has finalized all outstanding refunds for residential and commercial customers; and
- any outstanding final reports (i.e. quarterly reports); and
- confirmation Waste will complete, print, and distribute (including postage and mailing fees) a Spring newsletter notifying impacted City residents June 30, 2018

will be Waste's last pickup date; and

- confirmation Waste will participate in a scheduled May 10, 2018 Cal Recycle Meeting conference call and complete all required information requests from the Cal Recycle Attachment Waste regarding AB 341 and AB 1826; and
- a list of events and workshops held by the City and Waste; and
- confirmation Waste's Customer Service will inform the City's residents and businesses about the Waste and WRI transition process
- documents and information related to Waste's current residential, commercial, and industrial activities in the City are needed in completion of the City's transition efforts.

The City Attorney is requesting that the City Council adopt a resolution authorizing the issuance of subpoenas requiring the production of documents that will aid the City, its staff, and contractors and consultants in completing the City's ongoing investigation and transition efforts. The information and documents being sought will also aid the City in the pending change in control from Waste to WRI for collection of commercial and residential solid waste and recyclable materials in the City.

## **B. Analysis**

### **1. Legal Authority for Legislative Subpoenas**

Statutory authority to issue legislative subpoenas is set forth in Government Code section 37104, *et seq.* Section 37104 provides as follows:

"The legislative body may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it."

A legislative subpoena may be issued pursuant to Section 37104 where:

- (1) the subpoena is authorized by ordinance or similar enactment;
- (2) the subpoena serves a valid legislative purpose; and
- (3) the witnesses or materials subpoenaed are pertinent to the subject matter of the investigation. (*Connecticut Indemnity company v. Superior Court* (City of Lodi) (2000) 23 Cal.4th 807, 813.)

With respect to the first requirement listed above, the city attorneys' office has prepared a resolution which is the "enactment" necessary to authorize the issuance of legislative subpoenas. (*City of Lodi*, 23 Cal.4th at 810 (city council resolution authorized advisory committee to recommend that council issue subpoenas).)

As for the second requirement that the subpoenas serve a valid legislative purpose, California courts have held that the legislative subpoena power is broad. (*Id* at 810-11.)

Here, the City is seeking vital documents, records, and other information required to assure the orderly transition of commercial and residential solid waste and recyclable services from Waste to WRI.

The third above requirement authorizes subpoenas where the subpoenaed witnesses or documents are pertinent to the subject matter of the City's transition efforts. Here, the requested documents are tailored to assist the City in completing the collection of the documents, records, and other information required to assure the orderly transition of commercial and residential solid waste and recyclable services from Waste to WRI.

## **2. Execution and Enforcement of Subpoenas**

Should the City Council determine to authorize the issuance of legislative subpoenas, the subpoenas must be signed by the Mayor and attested to by the City Clerk. Once issued, legislative subpoenas are served in the same manner as they are served in civil actions. (Cal. Gov't Code § 37105.) If a subpoenaed person or entity fails or refuses to obey the subpoena, the City may request that the Superior Court initiate contempt proceedings against Waste. (Cal. Gov't Code §§ 37106 - 37109.)

## **V. FISCAL IMPACT**

None.

## **VI. EXHIBITS**

1. Resolution 18-046 (pp. 6-8)
2. City's Legislative Subpoena (pp. 9-14)

Prepared by: City Attorney's Office