



## Legislation Details (With Text)

**File #:** 2018-122      **Version:** 1      **Name:**  
**Type:** Special Order      **Status:** Agenda Ready  
**File created:** 2/21/2018      **In control:** City Council  
**On agenda:** 3/20/2018      **Final action:**  
**Title:** PUBLIC HEARING TO CONSIDER RESOLUTION 18-038 A RATE ADJUSTMENT TO THE INTEGRATED COMMERCIAL WASTE MANAGEMENT SERVICES RATES (CITY COUNCIL)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit 1.Resolution No 18-038-Commercial Rate Adjustment for WRI.pdf, 2. Exhibit 2.Notice of PF for Commercial Waste Hauler.pdf, 3. Exhibit 3.Waste Resource Technologies Inc. Agreement.pdf, 4. Exhibit 4.WRI Waste Management Commercial Rates Comparison.pdf, 5. Exhibit 5.218 Proportionality.pdf, 6. File Summary

| Date      | Ver. | Action By    | Action   | Result |
|-----------|------|--------------|----------|--------|
| 3/20/2018 | 1    | City Council | approved | Pass   |

## Report to Mayor and City Council

Tuesday, March 20, 2018

Special Orders of the Day

### SUBJECT:

**PUBLIC HEARING TO CONSIDER RESOLUTION 18-038 A RATE ADJUSTMENT TO THE INTEGRATED COMMERCIAL WASTE MANAGEMENT SERVICES RATES (CITY COUNCIL)**

### I. SUMMARY

On December 5, 2017, the City Council elected to exclusively negotiate with Waste Resources Inc., (WRI) to serve as the City's new solid waste hauler for the collection of residential and commercial solid waste commencing July 1, 2018. With the City's selection of a new waste hauler, a new rate structure for all solid waste services was submitted by WRI. The residential rate component of WRI's new rate structure was heard by the Council on March 20, 2018, and there was no majority protest from single-family residential property owners.

This action item pertains to the commercial rate adjustments (including multi-family properties). As in prior years, commercial properties will be directly billed on a monthly basis for commercial solid waste collection services. The "Proposition 218 Notice" attached hereto as Exhibit No. 2 further details the proposed rate structure and billing information.

If the proposed residential rates (already approved) and commercial rate structures are approved, WRI proposes that there will be no further adjustment to the rate schedule for a period of three years, from July 1, 2018 until July 1, 2021; absent further notice and opportunity for property owners to protest such adjustments. Upon expiration of the three-year period, a CPI inflationary adjustment may be applied in the years 2022 and 2023.

## **II. RECOMMENDATION**

1. OPEN the Public Hearing, TAKE public testimony, ACCEPT any additional written protests, CLOSE the Public Hearing and the Mayor shall ask the City Clerk to provide a count of all protests received.
2. CONSIDER AND DISCUSS the rate adjustment to the FY18/19 integrated commercial waste management service rates proposed by WRI.
3. APPROVE the commercial component of the integrated waste management services rate structure proposed by WRI, subject to there being no protest of a majority of *all* parcel owners subject to the new rate structure.
4. WAIVE further reading and ADOPT Resolution No. 18-038, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, TO CONSIDER AND APPROVE THE COMMERCIAL COMPONENT OF A NEW WASTE MANAGEMENT SERVICES RATE STRUCTURE, SUBJECT TO THERE BEING NO QUALIFIED PROTEST FROM A MAJORITY OF PROPERTY OWNERS SUBJECT TO THE NEW RATE STRUCTURE." (Exhibit No. 1)
5. AFFIRM, RECEIVE AND FILE the final "EXCLUSIVE FRANCHISE AGREEMENT FOR PROVISION OF INTEGRATED SOLID WASTE MANAGEMENT SERVICES" ("Agreement") attached hereto as Exhibit 3. The Agreement was approved in substance by the Council on February 20, 2018, and executed by all parties on March 15, 2018. Given the closing of hearings upon both residential and commercial rate structures, it is recommended that the Council AFFIRM, RECEIVE AND FILE the Agreement in its final form.

## **III. ALTERNATIVES**

1. DO NOT APPROVE the proposed rate adjustment for the commercial integrated waste management services rate.
2. TAKE another action that the City Council deems appropriate and consistent with the requirements of the law.

## **IV. BACKGROUND**

### History and Negotiations

On July 20, 2017, staff released a Request for Proposal for Integrated Solid Waste Management Services (RFP P17-19), seeking qualified companies to provide solid waste

collection, transportation, recycling and disposal services, as well as the potential development of solid waste facilities within the City.

On October 5, 2017, the City received proposals from seven solid waste haulers. After extensive review of the solid waste hauler proposals and Ad-hoc Solid Waste Committee interviews were conducted, there were two final candidates, EDCO Disposal (EDCO) and Waste Resources Inc. (WRI) for the Council consideration and appointment.

On December 5, 2017, Council provided staff direction to enter into negotiations with WRI for an exclusive franchise agreement for residential and commercial/industrial solid waste management services for 15 years, with a one-time option to extend for an additional twenty-four months.

On January 5, 2018, 26,750 Notices of Public Hearing regarding the rate adjustment to the City's waste hauling services were mailed by the United States Postal Services (Exhibit No. 2).

On February 20, 2018, the Council approved in substance the Agreement with WRI, which agreement was executed on March 15, 2018 (Exhibit 3).

The February 20<sup>th</sup> Council action approved all substantive terms of the Agreement, with the residential and commercial refuse rate structure to be approved separately via majority protest procedures (i.e., the majority protest process on the residential rate component occurred on February 20, 2018, and the commercial rate component being the action item now before Council).

The reason for the proposed new fee schedule is due to the City's bidding and selection process for exclusive solid waste hauling services and subsequent decision to negotiate the award of an exclusive franchise to WRI, whose operational costs to provide the requested solid waste hauling services varies from the City's previous hauler. The proposed rate schedule is based upon WRI's operational costs of providing waste hauling services to residential and commercial constituents in the City of Carson.

### Protest Hearing Process

California Constitution Article XIID, § 2 ("Proposition 218") defines "fee" or "charge" as "including a user fee or charge for a property related service." It is fairly settled that waste hauling qualifies as a property-related service; thus the rates for waste hauling are subject to Proposition 218. However, it is legally unsettled whether Proposition 218 refuse fee requirements apply to refuse services provided by private, third-party franchised waste haulers (as opposed to refuse services provided directly by a government agency). Nonetheless, in the interest of public outreach and transparency, the City of Carson has traditionally accommodated the Proposition 218 process, even for franchised, private waste haulers.

Proposition 218 requires mailed notices to ratepayers of new or increased property-related fees and creates a means for ratepayers to reject such fees via a "majority protest" at a public hearing. The Proposition 218 majority protest procedures to impose or increase a "fee or charge" are as follows:

- Identify the parcels upon which a fee or charge is proposed for imposition.
- Calculate the amount of the fee proposed to be imposed on each parcel.
- Provide written notice by mail to the “record owner of each identified parcel.”
- Conduct a public hearing on the proposed fee not less than 45 days after the mailing.
- Consider “all protests against the proposed fee or charge.”

If written protests against the fee are presented by a “majority of owners of the identified parcels,” the fee cannot be imposed.

Carson mailed notices of the public hearing/majority protest to refuse ratepayers in WRI’s potential service areas on January 5, 2018, which is 45-days prior to the public hearing now pending before the Council. These notices presented the calculated rates proposed for each parcel, noticed the public hearing, and provided detailed instructions for the submission of written protests. Notably, the commercial rate hearing was continued from February 20<sup>th</sup> to this meeting in order to accommodate further public outreach and education on the proposed commercial rate structure. Further information on the commercial rate component was mailed to all commercial, industrial and multi-family property owners on March 5, 2018, and WRI held a workshop on commercial rates on March 13, 2018.

For purposes of the commercial refuse rate protest process now pending before the Council, only one written protest per parcel will be counted. Protests to the proposed refuse rates must be submitted in writing. Written protests must be received prior to the close of the public hearing. Any written protests received following the close of the public hearing will not be counted. Written protests by electronic mail (e-mail) will not be accepted.

*To be clear:* Residential rates-meaning individual *cart* service rates for any residential premises-were already approved at the February 20, 2018 Council meeting. The rate component now pending before the Council is the rate structure for commercial bin/roll-off (i.e., dumpster) services. Such commercial bin/roll-off services include commercial and industrial premises, and most multi-family premises that have centralized dumpsters. Multi-family units that receive cart services are subject to the residential cart service rate.

The Mayor shall ask the City Clerk to provide a count of all protests received following the close of public hearing. If written protests against the proposed rates are presented by a “majority of owners of the identified parcels,” the rates cannot be imposed.

#### Analysis of the Residential Component of the Proposed New Refuse Rate Structure

Based upon information provided by WRI, revenues derived from commercial refuse rates will not exceed costs of providing residential refuse service, with the understanding that WRI operates as a market-competitive private corporate entity (as opposed to a non-profit governmental entity). In the course of RFP P17-19, seven waste haulers provided proposals for new refuse rate structures and services. RFP P17-19 specifically requested that rate structures be designed to minimize, to the extent competitively possible, excessive revenues derived from refuse rates in light of the costs of providing refuse service. Thus, as part of the evaluation process, each proposer submitted monthly rates

for waste hauling services. Following the competitive process, WRI's proposed rate structure was found to be highly competitive. In fact, a comparison of WRI's commercial rates are on-par with the majority of commercial rates imposed by the City's former waste hauler. (See Exhibit 4.)

WRI has provided data to support the conclusion that its proposed refuse rate structure is proportional as between different rate-payer categories and/or the cost of service attributable to various parcels using Carson refuse services. WRI has provided data demonstrating estimating its overall refuse service costs in Carson to be about 38% attributable to residential services and 62% attributable to commercial services, while refuse service revenues were estimated to be 37% attributable to residential services and 63% attributable to commercial services. (See Exhibit No. 5, Proportionality of Operational Revenues and Cost Allocations.)

Commercial refuse service fees are used to pay WRI for the refuse collection and disposal services it provides to the City's commercial customers, and are not payable to the City's general fund, any other City fund, or for any other purpose. In other words, the proposed refuse fees are not to be levied or imposed for general governmental services. In fact, to the extent that there is an increase in commercial refuse rates, WRI observes that such increases are due to new legal mandates and increased service levels to commercial customers. For example, state law now mandates commercial recycling and food recycling/composting programs for various commercial customers. WRI will also be providing extended commercial customer educational outreach and "food rescue" programs above and beyond the commercial waste services currently available to City customers.

## **V. FISCAL IMPACT**

Positive impacts to the City's General Fund are expected. All commercial rates are direct-billed to commercial customers. WRI will pay 15% of the gross revenues derived from commercial collection services to the City.

## **VI. EXHIBITS**

1. Resolution No. 18-038. (pp. 6-11)
2. Proposition 218 Commercial Rate Notices. (pp. 12-14)
3. Exclusive Franchise Agreement for Provision of Integrated Solid Waste Management Services. (pp. 15-125)
4. WRI to Waste Management Commercial Rate Comparison. (pp. 126)
5. Proportionality Charts. (pp. 127)

Prepared by: City Attorney's Office