



Legislation Text

File #: 2018-339, Version: 1

Report to Mayor and City Council

Tuesday, May 15, 2018

Discussion

SUBJECT:

RECEIVE AND FILE LEGISLATIVE SUBPOENAS & PROOFS OF SERVICE; RECEIVE AND FILE DOCUMENTS AND OTHER "WRITINGS" RESPONSIVE TO LEGISLATIVE SUBPOENAS; CONDUCT EXAMINATION OF WITNESSES SUBJECT TO LEGISLATIVE SUBPOENAS (CITY COUNCIL)

I. SUMMARY

This matter was continued from the May 1, 2018 City Council meeting. The City Attorney will be giving a verbal report this evening.

At its April 3, 2017 City Council meeting, the City Council determined that USA Waste of California, Inc. ("Waste") has failed or refused to provide to the City with 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./Waste Resources Technologies ("WRT").

Accordingly, the City Council authorized the City of Carson to exercise its subpoena powers, as granted by the Government Code, to compel production of this vitally needed information and to examine witnesses from Waste. Four such subpoenas have been served, with a "return" date of tonight's Council meeting.

On April 12, 2018, in a letter sent to the City, Waste objected to the service, content, and authority of the City's Legislative Subpoenas against Bill Higginbotham ("Higginbotham") and Darrell Kato ("Kato"). Waste further informed the City Sandra Ruiz is not associated with Waste, or any Waste subsidiary, in any way. Doug Corcoran ("Corcoran") was personally served with the City's Legislative Subpoena, but, according to the April 12th letter, was not available to appear at the April 17, 2018 Council Meeting due to a previously scheduled out-of-state trip. Waste also served the City with objections to Mr. Corcoran's Legislative Subpoena.

The City agreed to move Corcoran's testimony to the May 1, 2018 Council Meeting. Waste agreed to accept service for Kato and Higginbotham contingent upon their individual consent and also depending on Kato and Higginbotham's availability. Waste later issued objections to the City's Legislative Subpoenas for Kato and Higginbotham.

Waste has represented Corcoran will attend the May 1, 2018 Council Meeting and is prepared to authenticate submitted documents and records. At the posting of this agenda, the City Attorney's Office is still attempting to confirm whether Kato and/or Higginbotham

will attend the May 1 Council Meeting.

II. RECOMMENDATION

TAKE the following ACTION:

1. RECEIVE and FILE a copy of the following legislative subpoenas and accompanying proofs of personal service:
 - a. Doug Corcoran, Director of Operations
 - b. Bill Higginbotham, Controller
 - c. Darrell Kato, Controller
 - d. Sandra Ruiz, Waste Management
2. RECEIVE and FILE documents and other “writings” responsive to these subpoenas.
3. PLACE Waste representatives who are the subject of legislative subpoenas under oath, and conduct such examination of these witnesses as the City Council deems appropriate consistent with the scope of the legislative subpoenas and the requirements of law.

III. ALTERNATIVES

1. In the event any witnesses(es) fail(s) to attend the City Council meeting, direct the Office of the City Attorney to refer this non-compliance to the Los Angeles County Superior Court and request that contempt proceedings be initiated.
2. In the event any witnesses(es) fail(s) to produce documents or other “writing” response to the subpoena(s), direct the Office of the City Attorney to refer this non-compliance to the Los Angeles County Superior Court and request that contempt proceedings be initiated.
3. 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 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 WRT.

On March 26, 2018, the City facilitated a meeting (the “Meeting”) between City Staff, WRT, and Waste to transfer documents, records, and information required for the pending change in control from Waste to WRT 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 WRT.

The City has now issued and served subpoenas on representatives of Waste to 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 WRT 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 Council should now place each of the subpoenaed witnesses under oath, require them to produce documents or other "writings" responsive to the legislative subpoenas, and conduct such examination as the City Council deems appropriate within the scope of the subpoenas and consistent with the requirements of law.

2. Enforcement of Subpoenas

Should any person subpoenaed fail or refuse to obey the subpoena(s), the Council should direct the Office of the City Attorney to report the same to the Superior Court and then initiate contempt proceedings against such Waste representative(s). (Gov't Code §§ 37106 -09.)

V. FISCAL IMPACT

In the event of non-compliance there will be attorneys' fees and other costs necessary to enforce the same in an amount that cannot be ascertained as of the writing of this staff report.

VI. EXHIBITS

1. Legislative subpoena & proof of service - Doug Corcoran, Director of Operations (pp. 5-21).
2. Legislative subpoena & proof of service - Bill Higginbotham, Controller (pp. 22-37).
3. Legislative subpoena & proof of service - Darrell Kato, Controller (pp.38-53).
4. Legislative subpoena & proof of service - Sandra Ruiz, Waste Management (pp. 54-69).

Prepared by: City Attorney's Office