Report to Mayor and City Council

Tuesday, February 16, 2021

Special Orders of the Day

SUBJECT:

PUBLIC HEARING TO CONSIDER RESOLUTION NO. 21-014 TO CONSIDER AND APPROVE A RESIDENTIAL AND COMMERCIAL WASTE MANAGEMENT SERVICES RATE ADJUSTMENT FOLLOWING NOTICED MAJORITY PROTEST HEARING AND APPROVING AN ATTENDANT SECOND AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES, AN INCREASE OF 7.95%, AND APPROVE THE SECOND AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES (CITY COUNCIL)

I. SUMMARY

The City's residential and commercial waste hauler is WASTE RESOURCES LOS ANGELES, INC., a California corporation ("WRLA"), WASTE RESOURCES, INC., a California corporation, ("WRI") and WASTE RESOURCE TECHNOLOGIES, INC., a Delaware corporation ("WRT", and collectively with WRLA and WRI the "WRT Parties"). In recent years, WRT has suffered unexpected monetary losses and financial burdens as a result of certain legal disputes with the former hauler over the City's bidding process and the transition of the franchise. As a result, WRT has submitted a rate adjustment request of 7.95% for the residential and commercial waste hauling services, which rates would take effect mid-2021. In addition to the losses and financial impacts related to the litigation, which is the basis of this rate increase request, WRT has suffered significant fiscal impacts as a result of COVID-19, as have all solid waste haulers.

WRT's rate proposal was reviewed by a City Council subcommittee consisting of Mayor Davis-Holmes and former Mayor Robles. The subcommittee negotiated and analyzed the rate proposal with WRT over the course of nearly a year, prior to the final recommendation being presented to City Council. WRT's initial request to recover their litigation- and delay-related costs was nearly twice what is recommended here and was reduced through the Subcommittee's negotiation.

Property-related fees such as refuse rates are subject to a "majority protest" process under Cal. Const. Art. XIIID ("Prop 218). In December, the City mailed the Notice of Proposed

Increase to Refuse Service Charges ("Notice") to property owners of record as of the last equalized assessment roll. Copies of the Notice and exhibits are attached hereto as Exhibits 3 and 4.

As required by Article XIIID of the California Constitution, the Notice included the following required information:

1. The amount of the refuse fees proposed to be imposed upon each residential property owner or renter.

2. The basis upon which the amount of the proposed residential refuse fees were calculated.

3. The reason for the residential refuse fees.

4. The date, time, and location of a public hearing on the proposed residential refuse fee increases.

5. Instructions on how to file a written protest against the proposed increase in refuse fees.

This hearing is considered a "majority protest hearing" under Proposition 218. Residential and commercial property owners have the right to submit written protests and may do so per the protest guidelines made part of the mailed Notice to refuse service ratepayers. The majority protest would require more than 50% of the total properties of record for it to automatically deny the rate increase. At the conclusion of the public hearing and after hearing any testimony, should sufficient protests be submitted in opposition to the new rates, the City must stop further proceedings on the new refuse rates and deny them as a result of such successful majority protest.

II. RECOMMENDATION

1. OPEN the "majority protest" public hearing as required by Proposition 218.

2. TAKE public testimony and ACCEPT any additional written protests.

3. CLOSE the Public Hearing, and the Mayor shall ask the City Clerk to provide a count of all protests received.

4. WAIVE further reading and ADOPT Resolution No. 21-014: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA TO CONSIDER AND APPROVE A RESIDENTIAL AND COMMERCIAL WASTE MANAGEMENT SERVICES RATE ADJUSTMENT FOLLOWING NOTICED MAJORITY PROTEST HEARING AND APPROVING AN ATTENDANT SECOND AMENDMENT TO FRANCHISE

AGREEMENT FOR SOLID WASTE SERVICES" (Exhibit No. 1)

5. AUTHORIZE the Mayor to execute all documents related to the Second Amendment to the Franchise Agreement (Exhibit No. a. to Exhibit No. 1), in a form acceptable to the City Attorney.

III. ALTERNATIVES

1. CONTINUE the public hearing;

2. TAKE another action that the City Council deems appropriate and consistent with the requirements of the law.

IV. BACKGROUND

History and Negotiations

As the USA Waste Inc., dba Waste Management ("WM") franchises approached expiration in 2018, the City Council issued a request for proposals to explore whether solid waste service vendors other than WM might propose better economic/rate options and enhanced refuse services to City ratepayers. On July 18, 2017, the City posted a notice that it would be receiving proposals in response to the City's request for proposals (RFP P171-19) from qualified solid waste companies to provide solid waste collection, transportation, recycling, and disposal services with the intent to enter into an exclusive franchise agreement for residential and commercial solid waste management services. RFP P171-19 was published on July 20, 2017. WRT submitted a proposal to provide solid waste collection, transportation, recycling and disposal services to City in response to the RFP.

On December 5, 2017, the City Council found WRT's RFP Proposal to be the most economic and advantageous proposal to the City and its residents, with proportional rate distribution among ratepayer categories and enhanced service, collection, and environmental and community education programs. Thus, the City Council authorized the City Manager to enter into negotiations with WRT to enter into an exclusive franchise agreement for residential and commercial solid waste handling services.

On March 15, 2018, the City and WRT entered into an "Exclusive Franchise Agreement for Provision of Solid Waste Handling Services." ("WRT Franchise Agreement") Also on March 15, 2018, and on May 15, 2018 and May 22, 2018, WM initiated litigation against the City and WRT. Additionally, WM did not transition City-wide commercial refuse accounts it previously served to WRT. Subsequently, the transitional delay lasted for more than a year, causing WRT actual monetary losses that were later verified by independent auditors. Additionally, WRT incurred litigation costs, both for their direct defense against WM and

those legal costs reimbursable to the City under the terms of a "Reimbursement Agreement," which Agreement obligates the City to process requests by WRT for a rate increases commensurate with WRT's actually-incurred additional costs (subject to Prop 218 compliance).

In November 2019, WRT submitted a rate adjustment increase request to the City for residential and commercial waste hauling services under provisions of the Franchise Agreement that allow it to recover franchise-related costs. Based upon all the above-cited cost factors, WRT demonstrated that they were operating at a loss and requested that the City initiate a City-wide solid waste service rate review process to consider WRT's recoupment of their actual legal, operational and interest-based monetary losses that had accrued since the Contract Award.

Upon review, analysis and negotiation, the City and WRT have agreed to process a proposed 7.95% increase in the Maximum Rate Schedule as compensation for the increased costs to WRT identified. To this end, the City agreed to publish a 45-day notice of proposed rate increases consistent with that rate structure shown in (Exhibit 2) "Proposed Maximum Rate Schedule" and to conduct a "majority protest" hearing process in accordance with Proposition 218, Cal. Const., Art. XIIID, Prop 218." The rate schedule, included as Exhibit 2, is also an exhibit to the Second Amendment, which is an exhibit to the Resolution.

By way of example, residential rates will increase from $20.87/month to $22.53/month, and a sample similar commercial rate increase - of a 3 cubic yard bin collected 1x/week -- would increase from $175.00 to $188.81. Rates for other levels of service would increase by the same percentage.

Protest Hearing Process

California Constitution Article XIIID, § 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.

powered by Legistar™

- 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 public hearing/majority protest out to residential and commercial ratepayers in WRT's services area on December 30, 2020, which is more than 45-days prior to the public hearing now pending before the Council. These notices presented the calculated rates proposed for each parcel, noticed tonight's public hearing, and provided detailed instructions for the submission of written protests.

Only one written protest per parcel in WRT's service area 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.

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.

Agreement and CMC Requirements

On December 30, 2020, the Notices of Public Hearing for Residential and Commercial solid waste services, regarding the rate adjustment to the City's waste hauling services were mailed by the United States Postal Services (Exhibit 3 and Exhibit 4)

In accordance to the Carson Municipal Code (CMC) Section 5229 of Article V, Chapter 2-Collection of Charges, "The City shall collect fees for residential solid waste collection services by causing fees to be placed on the Los Angeles County Tax rolls though procedures established by the Los Angeles County Collector. No charge shall be made directly to a residential householder by the franchised residential collector, except as otherwise specifically authorized by the City Council." (Exhibit 5)

It also states in the CMC, "Every commercial/industrial collector shall be solely responsible for collecting the charges for such collector's services for providing commercial/industrial collections pursuant to this Chapter, and the City shall have no liability or responsibility therefor." (Exhibit 6)

V. FISCAL IMPACT

All commercial rates are direct-billed to commercial customers; residential rates are

enrolled on property tax rolls. The Integrated Residential and Commercial Waste Management Services adjustment will result in a minor increase in the City Franchise Fees.

VI. EXHIBITS

1. "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA TO CONSIDER AND APPROVE A RESIDENTIAL AND COMMERCIAL WASTE MANAGEMENT SERVICES RATE ADJUSTMENT FOLLOWING NOTICED MAJORITY PROTEST HEARING AND APPROVING AN ATTENDANT SECOND AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES" (pgs. 7-19)
    a. Second Amendment to Franchise Agreement for Solid Waste Services
        i. Rate structure attached to Second Amendment as an exhibit to that Amendment.
2. Maximum Rate Schedule (pgs. 20-22)
3. Certificate of Posting and Notice of Public Hearing-Residential dated December 30, 2020. (pgs. 23-27)
4. Certificate of Posting and Notice of Public Hearing-Commercial dated December 30, 2020. (pgs. 28-32)
5. Carson Municipal Code Article V-Chapter 2,Section 5229-Residential (pg. 33)
6. Carson Municipal Code Article V-Chapter 2,Section 5229-Commercial (pg. 34)

Prepared by: Robin Wilson, Public Works Program Administrator,

Veronica Rodriguez, Right of Way Operations & Maintenance Superintendent, and John Raymond, Assistant City Manager

powered by Legistar™