

Reynolds, Chantal R.

From: Announcements
Sent: Friday, February 21, 2014 10:54 AM
To: Announcements
Subject: Information Memo - Information Zero Waste Services RFP Negotiations

Follow Up Flag: Follow up
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DISTRIBUTION DATE 2/21/14

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: BROOKE A. LEVIN
Interim Director,

PWA

SUBJECT: Information Zero Waste Services
RFP Negotiations

DATE: February 21, 2014

City Administrator

Date

Approval

/s/ Deanna J. Santana

2/21/14

INFORMATION

This memo provides background information regarding the Zero Waste Services Request For Proposals (RFP) process and the negotiations with the top-ranked proposers, to prepare City Council for consideration of forthcoming recommendations on the award of Zero Waste franchise contracts. It is expected that these recommendations will be discussed at a Special Meeting of the City Council in early May 2014, and published in advance of the meeting in accordance with the City's Sunshine Ordinance and Brown Act requirements.

Background

The City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County (WMAC), and the Agreement for Residential Recycling Service with California Waste Solutions (CWS) expire on June 30, 2015. Replacement of these contracts is critical to public health and safety, and procurement of these services through RFP process is consistent with the City's adopted Zero Waste Strategic Plan.

Following a series of City Council meetings that began in November 2011, in which City Council provided policy direction on 32 matters of interest, the RFP was issued in August 2012. Proposals were received in January 2013, and thoroughly evaluated by teams of experts over the next several months. In June 2013, City Council authorized negotiation with the top proposers.

The RFP was divided into three service groups: Mixed Materials and Organics Collection (MMO), Residential Recycling Collection (RR), and Solid Waste Disposal. CWS submitted qualified proposals for MMO and RR, and WMAC submitted qualified proposals for all three service groups. Per City Council authorization, negotiations for final franchise contract terms are being pursued with both companies simultaneously.

Policies and Options

City Council provided policy direction on a broad variety of matters starting with the structure of the Zero Waste System, affecting the implementation of the procurement process, and including specific provisions of the RFP and the draft franchise contracts it contained. These policies were adopted in June 2012 and again in June 2013, with authorization to negotiate, where some additional policies were established by a motion of the Council. The adopted policies are attached as **Exhibit A**.

The policies that apply specifically to the terms of the contracts were examined and certified as compliant during the proposal evaluation process and have not been subject to negotiation with the proposers.

Other City Council policy directions mandated the inclusion of several options for which the proposers were asked to provide pricing. The options were:

1. System for collecting delinquent bill payments
 - a. Alternate lien process
 - b. No lien
2. Customer call center location
 - a. In Alameda County
 - b. Outside Alameda County
3. Source separated organics collection from multifamily dwellings
 - a. Container provided on request for no additional charge
 - b. Container provided on request for clearly identified additional charge
 - c. Container provided by default for no additional charge

Both proposers have provided customer rate tables that address all of these options. Council will be presented with analysis of the proposed rates and options and recommendations for option selection. Council will also be presented with recommendations for the award of the franchise contracts for the three service groups.

Respectfully submitted,

/s/

BROOKE A. LEVIN
Interim Director, Public Works Agency

All public information regarding the Zero Waste Services RFP is published online at www.zerowasteoakland.com. For questions please contact Susan Kattchee, Acting Assistant Director, Public Works Agency, Department of Facilities and Environment, at (510) 238-6382.



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MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Brooke A. Levin
Interim Director, PWA

SUBJECT: Information Zero Waste Services
RFP Negotiations

DATE: February 21, 2014

City Administrator	Date
Approval <u>/s/ Deanna J. Santana</u>	<u>2/21/14</u>

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Respectfully submitted,

/s/

BROOKE A. LEVIN
Interim Director, Public Works Agency

All public information regarding the Zero Waste Services RFP is published online at www.zerowasteoakland.com. For questions please contact Susan Kattchee, Acting Assistant Director, Public Works Agency, Department of Facilities and Environment, at (510) 238-6382.

Zero Waste System Design and RFP Policy Decisions Summary

January – June 2012

	Policy Decision
1.	<p>Approved the Zero Waste System Design that shall include a single franchise for citywide garbage and organics (G&O) collection services which comprises:</p> <ul style="list-style-type: none"> a. Single family dwelling garbage and organics collection and processing without changes to the existing three-cart system b. Multifamily dwelling (MFD) garbage and organics collection and processing with: <ul style="list-style-type: none"> • a two-container system: one container for recyclables and the other container for all other discards ("mixed materials"), which will be processed at a material recovery facility (MRF) to recover organic materials for composting • three-container service options for collection of source-separated organics from MFDs c. Commercial recycling collection and processing will be required services in the G&O or Residential Recycling (RR) franchise contracts, provided on a non-exclusive basis. d. City services – same collection services as provided presently, with some add-ons, including illegal dumping pick-up services e. Recycling collection services for large public events f. Solid waste transfer and transport to the City's selected landfill g. Bulky Pickup Service for MFD/Condominiums
2.	Approved the Zero Waste System Design that shall include a single franchise for citywide residential recycling (RR) collection and processing services.
3.	Approved the Zero Waste System Design that shall include landfill capacity procured separately from collection and processing services.
4.	Approved the Zero Waste System Design that shall include a permit system that "licenses" recyclers serving Oakland businesses.
5.	Approved the Zero Waste System Design that shall include a non-exclusive franchise system to regulate construction and demolition (C&D) debris hauling, including both solid waste and recycling.
6.	Approved the Zero Waste System Design that shall include G&O and RR franchise contracts that have 10-year terms plus two 5-year options, and Landfill Disposal franchise contract that has a 20-year term, plus two 5-year options.
7.	Approved the Zero Waste System Design that shall include specialty organics recycling (e.g., animal feed) as a not-exclusively-franchised, fee-for-service activity.
8.	Directed that respondents to the RFP shall be eligible to submit proposals for, and may be awarded, more than one contract. Proposals for each contract shall be evaluated separately, and the City shall accept alternative proposals for multiple contracts.
9.	Directed that the entire RFP process shall be managed by a Project Manager, and conducted by a designated Process Coordinator who shall facilitate the review and evaluation work of several teams composed of City staff, the City's technical assistance consultant, and other experts in the field.
10.	Directed that the evaluation process shall identify a top-ranked proposal for each of the three

	Policy Decision
	contracts, which shall be published in a City Council report. Staff shall seek City Council authorization to enter into negotiations with the respondent submitting the top-ranked proposal or proposals for each contract in order to finalize contracts. Staff shall return to City Council with a recommendation once negotiations are completed.
11.	Directed that the RFP schedule for establishing new contracts shall be as described in the City Council report dated February 14, 2012.
12.	Directed that the Protocol for Process Integrity shall be as described in the City Council report dated February 14, 2012.
13.	Directed that the RFP process shall be overseen by an Executive Management Team, which shall include the Public Works Director and representatives from the City Administrator's Office, Finance and Management Agency, and Office of the City Attorney.
14.	Directed that the evaluation criteria and weighting for the proposals for the G&O Garbage and Organics franchise and RR franchise shall be as described in the City Council report dated March 27, 2012.
15.	Directed that evaluation criteria and weighting for the proposals for the Landfill Disposal franchise shall be as described in the City Council report dated March 27, 2012.
16.	Directed that Zero Waste System contracts shall provide for a solid waste industry-related index to calculate annual adjustments to customer rates.
17.	Directed that Zero Waste System contracts shall include a provision for withholding full annual adjustment of compensation to the G&O franchise and to the RR franchise if the annual diversion performance requirement is not met.
18.	Directed that Zero Waste System contracts shall include a provision for the denial of contract extension if the G&O or RR franchisee fails to meet the contract diversion performance standard in year seven of the contract.
19.	Directed that the disposal tipping fee shall include payment of Alameda County Measure D fees on franchised Oakland solid waste that may be disposed in a landfill outside of Alameda County.
20.	Directed that G&O RFP responses shall include two options for addressing the impact of the delinquent bill payments on proposed customer rates: the alternate lien process and no lien process, as described in the Public Works Committee Report dated April 24, 2012.
21.	Directed that new Zero Waste System contracts shall include provisions on City policies for Equal Benefits, Living Wage and Campaign Contributions, as they are included in the existing contracts.
22.	Directed that new Zero Waste System Contracts shall require contractors to remove on the initial job application the requirement to disclose felony history as long as it complies with governing laws.
23.	Directed that new G&O and RR Zero Waste System contracts shall require contractors to pay Competitive Wages and Benefits, defined as wages and benefits equivalent to or better than collectively bargained contracts in use in Alameda, Contra Costa, San Francisco, Santa Clara, and San Mateo Counties.
24.	Directed that the Zero Waste System RFP shall encourage maximization of local business presence and participation, including participation by local non-profits and public agencies for the G&O and RR contracts by providing up to three (3) preference points in half-point increments beyond the 100 points established for proposal evaluation based on the economic value to Oakland of their existing and proposed operations in Oakland, with only the most

	Policy Decision
	valuable proposal eligible for the full three (3) points.
25.	Directed that the new G&O and RR Zero Waste System contracts shall require local hiring such that 50% of all new hires must be Oakland residents, and the Zero Waste System RFP shall award up to one (1) local hire preference point in half point increments beyond the 100 points established for the proposal evaluation for commitment to train and hire local disadvantaged workers, and award up to two (2) local hire preference points in half point increments for commitment to maintain a certain total percent of FTEs (full time equivalent positions) who are Oakland residents, in their workforce, including management positions, on a year-by-year basis with initial points taking into consideration the number of FTEs, in addition to percent of workforce.
26.	Directed that new G&O and RR Zero Waste System contracts shall require that employment preference be offered for the qualified displaced employees of the current solid waste franchise and residential recycling contractor. The employees, for at least 90 days, shall not be discharged except for cause.
27.	Directed that the Zero Waste System RFP shall award up to two points for Landfill Disposal proposals including in-county landfills.
28.	Directed that the Zero Waste System RFP shall require proposers to submit labor peace plans for labor disputes or unrest during the franchise term.
29.	Directed that the Zero Waste System RFP shall require proposers for the G&O franchise to submit proposals that include a customer service call center located in Alameda County. Proposers may also submit proposals that include a customer service call center outside of Alameda County and indicate the cost differential.
30.	Directed that the Zero Waste System RFP shall seek proposals for Zero Waste Services from all qualified firms (including those based in Arizona) to establish competition to avoid significant additional costs to City rate payers.
31.	Directed that the Zero Waste System RFP shall require proposers for the G&O franchise to submit proposals that include within the rate structure for Multi-Family Dwellings a third "green" container at no additional charge whenever the property owner requests it. Proposers may also submit proposals that include a third "green" container option for Multi-Family Dwellings at a clearly identified additional charge.
32.	Directed that the RFP and contracts shall include terminology sufficient to ensure compliance with the payment provisions and the economic benefits required by the RFP, in addition to those that are stated in the proposals submitted by the selected G&O and RR proposers. Enforcement mechanisms shall include use of liquidated damages, access to the financial securities posted, and ultimately the potential of early termination. The RFP shall make clear that the failure to maintain compliance with the forgoing provisions may also result in the City denying an extension of the franchise in contract year ten. These enforcement remedies may be cumulative.

DRAFT Motion from Oakland City Council Meeting on June 18, 2013

Direct staff to negotiate with the two proposers and report back to Council on:

- Cost impacts for 10- and 20-year terms for all three contracts
- Results of discussions with EBMUD concerning use of their digester
- Direct tenant access to bulky pickup service
- Cost proposals for MFD source separated organics collection (3rd bin) at no extra cost
- Mattresses buy-back or other program
- Illegal dumping measures, including
 - Sunday collection services for commercial corridors
 - Expanding or increasing franchisee collection, i.e., more days, more piles
 - Franchise enforcement (against fly-by-nighters)

Kaplan, Rebecca

From: Bolotina, Olga
Sent: Monday, September 22, 2014 4:29 PM
To: Gardner, Henry; Levin, Brooke A.; Quan, Jean; Kernighan, Pat; Parker, Barbara
Cc: Kaplan, Rebecca; McElhaney, Lynette; Kalb, Dan; Chan, Ada; Jones-Taylor, Audree V.; Wald, Zachary; Farmer, Casey; Bolotina, Olga
Subject: Zero Waste franchise agreement Memo from Councilmembers McElhaney, Kaplan and Kalb
Attachments: Memo_Zero Waste Agreement_9.22.2014.docx

Dear Mr. Gardner,

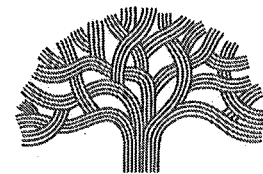
Please see the attached memo regarding the pending Zero Waste franchise agreement(s).

On behalf of Councilmembers McElhaney, Kaplan and Kalb, thank you for considering and responding to our thoughts and questions.

With best regards,

Olga

Olga A. Bolotina
Community Outreach Director
Office of District One City Councilmember Dan Kalb
City of Oakland
1 Frank H. Ogawa Plaza, Suite 230, Oakland, CA 94612
Direct: 510-238-7240
obolotina@oaklandnet.com



CITY OF OAKLAND

CITY HALL ■ 1 FRANK H. OGAWA PLAZA, 2nd Floor ■ OAKLAND, CALIFORNIA 94612

Dan Kalb (510) 238 – 7001

COUNCILMEMBER ~ DISTRICT 1

Rebecca Kaplan (510) 238 – 7008

COUNCILMEMBER ~ DISTRICT AT LARGE

Lynette Gibson McElhaney (510) 238 – 7003

COUNCILMEMBER ~ DISTRICT 3

September 22, 2014

Henry Gardner
City Administrator

Greetings Henry,

We hope and request that the following information be made available *today* in order to better inform our decision-making:

- **Redline Copy** of the Contract clearly identifying changes made between the Contract with CWS authorized by the Council on August 13th 2014 and proposed contract with CWS and WMAC.
- **The new rate tables** for Commercial, Multi-family and Roll-off with a comparison to the previous contract price with CWS.
- Any **changes (omissions)** we are asked to agree to. Please clarify omissions on pages 66-69 of the proposed contract, including provisions for dealing with "**sharps**" and "**hazardous waste**".

In reviewing the MOU signed by CWS and WMAC we are requesting that:

- **Section #1**
"WMAC will dismiss with prejudice its lawsuit against CWS and the City of Oakland (the City), with a corresponding release and/ or forbearance of any and all claims CWS and/or the City have, or could assert, against WMAC and/or its affiliate"

Language needs to be tightened up to clearly reflect that all the complaints restrictions for the city apply only to the current lawsuits and not to any future agreements.

- **Section #4**
"WMAC will perform all MMO and Disposal services, subject to the negotiation of a mutually acceptable contract and rate terms between WMAC and the City of Oakland. CWS will perform RR services, subject to the negotiation of a mutually acceptable contract and rate terms between CWS; and the City of Oakland. As discussed with City, it is contemplated by the



Parties that the total rates from CWS and WMAC will not exceed the amount of revenue in WMAC's August 12, 2014 final written proposal to the City."

Statement that "the total rates from CWS and WMAC will not exceed the amount of revenue in WMAC's August 12, 2014 final written proposal to the City." needs to be revised to say "the total rates from CWS and WMAC will not exceed the amount of revenue in CWS's August 12, 2014 final written proposal to the City."

▪ **Section #6**

"WMAC expects to negotiate a mutually acceptable contract with the City that contemplates revised commercial, multifamily, and roll off rates but WMAC shall not exceed the residential rates approved by the City for the CWS MMO contract and the Disposal Contract."

Multifamily residential rates should be excluded from additional increases and all the other rates should be specified.

▪ **Section #7:**

"WMAC will work with Civicorps and EBMUD as CWS was directed by prior City action."

Specific language to be added: The Franchisee shall deliver all commercial and multi-family source-separated organics to East Bay Municipal Utility District as collected, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator. The Franchisee will discuss with EBMUD to develop a long-term approach for converting the single-family organic stream to energy at the EBMUD facility, and by July 1, 2018 shall develop a separate processing agreement with EBMUD for delivering these materials, subject to approval by the City Administrator. Civicorps will act as a subcontractor for picking up commercial organic materials from Oakland commercial establishments and businesses.

▪ **Section #15**

"WMAC will acquire a ten year Right of First Refusal (ROFR) for any of CWS recycling businesses in Alameda County for a total value and purchase price of \$12,500,000. Payment will be \$2,500,000 upon execution of the ROFR upon City approval of MMO, RR and Disposal as provided herein. The balance with interest at the rate of 3.5% per annum will be payable in level payments over ten years, commencing of July 1, 2015."

This section needs to be removed from the agreement. Or be modified to include the words "at least" before the \$12.5M figure.

▪ **Additional Sections not included in the agreement to be added:**

- WMAC needs to sign the **labor agreement with ILWU** before any contract with the City is executed.
- WMAC needs to sign a **binding agreement of direct or indirect non-interference** with CWS business.

In reviewing the contract we are requesting that:



- CWS had clearly indicated that they are not asking for relief from liquidated damages due to a company-initiated 'lock-out'. We want to make sure that WMAC is held to that same standard.
- **Section 10.03 - MFD Organic Materials Collection Service** of the proposed contract is modified—see Appendix A.
- **In County Call Center** staffed and services by human operators be included into the contract
- **Civicorps** – The Franchisee shall allocate citywide commercial source-separated organics collection and disposal services to Civicorps to be handled at the EBMUD local waste-to-energy facility;
- **EBMUD** - The Franchisee shall deliver all commercial and multi-family source-separated organics to East Bay Municipal Utility District as collected, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator.
- **WMAC initial MM&O and Disposal contracts to be authorized for 10 years** with possibility of two five year extensions at the City's discretion. CWS had agreed to this.
- **CWS to be paid the MMO overage rates for RR bins** that are contaminated rather than that work and fees going to WMAC.
- WMAC compensates the **City for legal fees** specified by the City Attorney.
- WMAC specifies ways of how they will deal with "**Sharps**" and "**Hazardous Waste**"
- Any agreement(s) **allow for the extension** of any Zero Waste Franchise agreements by the City of Oakland.

Respectfully,



Dan Kalb
Councilmember, District 1



Lynette Gibson McElhaney
Councilmember, District 3



Rebecca Kaplan
Councilmember At-large

cc: Mayor Jean Quan
Council President Pat Kernighan
Brooke Levin, Director, Oakland Public Works
Barbara Parker, City Attorney

Appendix A. Proposed modifications to sections in contract on multi-family Organics collection

10.03 MFD Organic Materials Collection Service. This service will be governed by the following terms and conditions: *[this may change depending on final Council decision]*

10.03.1 Containerized Organic Materials. CONTRACTOR shall provide MFD Organic Materials Collection Service to all MFD Customers in the Service Area ~~who request such service and whose~~ Organic Materials are properly containerized in Organic Materials Carts or Bins, except as set forth in Sections 10.03.5 and 10.04, regardless of whether the lids are closed. CONTRACTOR shall provide all



MFD Customers requesting this service with a written copy of the provisions of Section 10.03.7 regarding possible surcharge due to excessive contamination of Organics carts ~~discontinuance of service.~~

10.03.2 Service Frequency. CONTRACTOR shall provide MFD Organic Materials Collection Service one (1) time per week. However, in those instances where the scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection day may be adjusted in a manner agreed to between the Service Recipient and CONTRACTOR as long as service is received a minimum of one (1) time per week.

10.03.3 Container Sizes. Except as set forth in Section 10.03.6 CONTRACTOR shall offer Organic Materials Containers in 32, and 64 gallon nominal Cart sizes.

10.03.4 Minimum Capacity. At a minimum, CONTRACTOR shall provide one (1) 32 gallon Organic Materials Cart to any MFD of twelve (12) or fewer Dwelling Units, and one (1) 64 gallon Organic Materials Cart to any MFD of thirteen or (13) more Dwelling Units.

10.03.5 Collection of Organic Materials Overages. CONTRACTOR shall be required to Collect all Organic Materials that are set out for Collection regardless of whether or not the Organic Materials are contained in an Organic Materials Cart. CONTRACTOR shall be entitled to additional compensation for the Collection of Organic Materials Overages in accordance with the approved "Overage" surcharge as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

10.03.6 Additional Organic Materials Capacity. Upon notification to CONTRACTOR by CITY or a Customer that additional Organic Materials capacity is requested, CONTRACTOR shall deliver such Organic Materials Containers as are needed to meet the capacity requirements of the Service Address by the next regularly scheduled Collection day or within six (6) Work Days (whichever is later). CONTRACTOR must provide additional Container capacity if requested by the MFD Customer.

10.03.7 Reduction or Discontinuation of Service. CONTRACTOR shall retain the right to temporarily reduce capacity of or ~~discontinue provision~~ levy a surcharge on ~~of~~ Organic Materials Collection Service to Service Addresses under the following circumstances.

10.03.7.1 After June 30, 2016, ~~the~~ Organics Cart is found to be contaminated through the inclusion of more than ten (10) percent of materials that are not Organic Materials as defined herein more than ~~four~~-ten (4-10) times in any twelve (12) month period. Upon finding a ~~fourth~~-tenth instance of such contamination in any twelve (12) month period CONTRACTOR shall notify the MFD Customer in writing that an additional violation of the contamination requirements of the program ~~will~~ may result in the ~~discontinuance of service~~ an additional surcharge for Organic Materials Collection Service. Prior to levying any such surcharge, CONTRACTOR must conduct additional outreach to MFD residents to educate them about the separation of Organic Materials at their building.

10.03.8 Organic Materials Processing Facility. CONTRACTOR shall deliver all Collected Organic Materials to a fully permitted Organic Materials Processing Facility. All expenses related to Organic Materials Processing and marketing will be the sole responsibility of CONTRACTOR.



10.03.9 Organic Materials Processing Services. Except for Organic Materials Residue or as otherwise provided in Section 30 of this Contract, CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Contract are Diverted consistent with definitions in all relevant state, county, and municipal laws.





WASTE MANAGEMENT of
ALAMEDA COUNTY, INC.
172 98th Avenue
Oakland, CA 94603
(510) 383-2404
(510) 562-2854 Fax

July 29, 2014

Honorable Mayor Jean Quan
Members of Oakland City Council
Henry Gardner, City Administrator
Zero Waste Committee
City of Oakland
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Re: Response to California Waste Solutions, Inc.'s Letter dated June (sic) 25, 2014

Dear Mayor, City Councilmembers, City Administrator and Zero Waste Committee:

We are in receipt of California Waste Solutions above-referenced letter and it appears CWS has once again made a number of false and defamatory statements regarding the Oakland staff, the Zero Waste Committee and Waste Management of Alameda County, Inc. (WMAC). This is unfortunate, but understandable considering that after being given a second and third opportunity to demonstrate it was capable of meeting the City's **Zero Waste Initiative**, CWS' plan continues to pose considerable risk. This was made very evident by the staff's careful and diligent reevaluation of CWS' abandoned Plan A, abandoned Plan B and its subsequent Plan C with Plan B as a backup. After being given this opportunity, which no other proposer was given, and which was contrary to the requirements of the Zero Waste Services Procurement process, CWS' only response is to ignore the obvious defects in its proposal and instead attack the city Staff and our Company. CWS's desperation is regrettable, and we are left with no other option but to correct the record on a number of relevant issues and address the false assertion that "*City Staff also failed to listen to the clear direction of the City Council...*" Below is our response to CWS' inaccurate and/or defamatory allegations, followed by a recitation of the real facts on which the Council should rely in making a decision that benefits the ratepayers while also meeting the City's goal of Zero Waste beginning on **DAY ONE** of the new contract.

1. Cooperation with EBMUD in Organics Processing

Contrary to CWS' false assertions, WMAC and the East Bay Municipal Utility District (EBMUD) met on numerous occasions prior to our January 9, 2013 response to the City's Request for Proposals for Zero Waste Services in an effort to partner on processing of organics to meet the City's diversion goals. Because EBMUD's solution for residue was deposition into a landfill as Alternative Daily Cover (ADC), which does not count as "diversion" under the RFP and does not meet the definition of "diversion" under the policies set forth by the Alameda County Joint Power Authority, StopWaste.Org., WMAC and EBMUD were unable to collaborate and both parties submitted a joint letter so advising the Oakland Zero Waste Committee.

As a result, WMAC developed its own residential and commercial organic solution which includes aggressive Public Education and Outreach, improvements in Source Separation of all organics, separation of organics through Multi-Family processing at Davis Street (2015), Mixed Material



Processing at Davis Street (2017/18), Composting of Organics at Redwood Composting (2015) and digestion and composting of organics at the Altamont (2016). This was submitted in our response to the MMO RFP on January 9, 2013. Most importantly, we will be processing Multi-Family on DAY ONE and composting Oakland's organics as opposed to CWS, which proposes a five-year or more delay in processing Multi-Family.

Fourteen months after we developed our programs and submitted our response to the MMO RFP, and long after the MMO was originally anticipated to be awarded (on or before December 31, 2013), EBMUD proposed using its residue for "land application" versus use as ADC in an effort to get residue to count as diversion. Council directed staff to request WMAC and CWS to provide pricing for use of EBMUD for commercial organics (source separated and processed). WMAC met with EBMUD and provided pricing to the Zero Waste Committee in response to Council's Resolution. Currently, the parties have a draft Term Sheet outlining contractual terms (pricing and volume commitment) in the event Council directs WMAC to deliver commercial organics to EBMUD's Oakland facility.

Moreover, after the May 29, 2014 Council Meeting, WMAC and EMBUD representatives met on two separate occasions to discuss WMAC "financials" regarding its proposed organics solutions and pricing. EBMUD representatives asked a number of questions, all of which were responded to in detail. At no time was either meeting cut short. In fact, there continues to remain an opportunity for EBMUD and WMAC to partner around commercial organics with or without the direction of Oakland City Council.

Consequently, CWS' assertion in its July 25, 2014 letter that "*WM, in its 'my way or the highway' approach, simply refused to budge, instead insisting on privatization of Organics for the next two decades*" is categorically false.

2. Keeping Oakland Jobs in Oakland by Locating the Call Center in Oakland

In response to the MMO RFP, WMAC included an Oakland-based Call Center. This is a fact and a matter of public record. However, WMAC, as directed by the RFP, provided an alternative discount if Oakland's Call Center remained "out-of-county". An in-county facility increases ratepayer costs due to expenses under WMAC's collective bargaining agreement with International Longshoremen Workers Union No. 6 versus our lower cost Regional Call Center. The option of an in-county or out-of-county call center was left to the discretion of the City; the recommendation before the Council includes the out-of-county option in order to reduce costs to ratepayers. It should be noted, however, that WMAC still has 28 Local 6 Clerical employees performing a variety of clerical functions at our 98th Avenue office including Oakland lien processing, Oakland customer service, Oakland pay station, Oakland billing and Oakland dispatching. Loss of the MMO to CWS would eliminate a number of Local 6 Clerical jobs. We trust if CWS is awarded the MMO, its local call center will be unionized with Local 6 Clerical employees providing the call center, customer service, dispatch, billing and clerical work and will further take on our current wages, health and welfare and pension cost. We just want to ensure there is an "apples to apples" comparison and obligation. The Council may wish to get clarification from CWS on this point. Just as important, contrary to CWS' defamatory statements in its July 25 letter, WMAC did not "... close the local call center when it locked out its employees." The lockout of Local 70



occurred in July 2007. WMAC's closing of its local call center occurred in December 2009. There is no nexus between the two events and the inference that WMAC closed its call center in retaliation for the Local 70 lockout is completely false.. Waste Management company-wide has 22 million residential customers and has been consolidating "call centers" for the last 10 years. This was a business necessity to provide better customer service through backup facilities and redundancy in the event of spikes in call volume, inclement weather or natural disasters.

The City Council, City Administrator and staff may wish to ask CWS what its call center back-up plan is in the event of any difficulties. California and the Bay Area are not immune from natural disasters.

Finally, for the reasons stated above, CWS' allegations that WMAC has taken a "*my way or the highway for local call center jobs*" is false.

3. Working with CivicCorps

At no time has WMAC ever dismissed CivicCorps or suggested to Staff that CivicCorp could not be part of WMAC's operations if we were awarded the MMO contract. To the contrary, as evidenced in the Staff Report dated July 21, 2014: "*Both CWS and WMAC have stated their commitment to partner with CivicCorps for activities best suited to the non-profits strengths such as community outreach, surveying, tabling, door-to-door delivery to optimize outreach and diversion*". It should be noted that Staff advised CivicCorps a couple of years ago as it was beginning commercial organic service on behalf of Recology that *Commercial Organics* would be part of the Oakland franchise in 2015. CivicCorps began its commercial organics program but chose not to respond to the MMO RFP and further chose not to reach out to WMAC in an effort to partner in its response to the RFP submittal on January 9, 2013. Eighteen months after responses to the RFPs were due; CivicCorps now submits a non-qualifying proposal for commercial organics.

Nevertheless, CivicCorps would and should be a valuable partner with WMAC in our Community Outreach Strategy as we engage sectors and streams for maximum diversion, engage community partners, implement outreach pilots, mobilize our Zero Waste Ambassadors and deploy job training and internships. Additionally, WMAC and Local 70 have discussed, and continue to, discuss a "driver-training" program. This would be a program between WMAC and Local 70 as they have jurisdiction but could likewise involve CivicCorp and other non-profit organizations.

Once again, CWS' allegations that WMAC, "*...has ignored CivicCorps and, again, indicated its 'my way or the highway' approach to meeting the reasonable directives of the City Council*" is false.

a. Rules & Legislation Committee Request to Schedule an Agenda Item dated July 23, 2014

WMAC received a memorandum from the Rules & Legislation Committee "*directing the City Administrator to negotiate and execute a franchise contract with CivicCorps in accordance with their proposal...*" or "*as an alternative, the Council shall consider... CivicCorps as a subcontractor to provide services for collection of commercial organics...at the same overall rates set forth in the*



Council approved franchise ordinance.” WMAC is concerned for a variety of reasons with this proposed Agenda Item but will focus on two issues for the City to consider:

- MMO Funding Mechanism: All MMO ratepayers fund a portion of Oakland’s \$25,000,000 franchise fee and \$3,500,000 in free City Services (which includes services to all City/municipal buildings and facilities, city cans, illegal dumping abatement program, graffiti abatement program, Amnesty Days, Oakland Public Works free disposal at Davis Street, Councilmember District roll-off boxes, etc.). Just as important, the MMO ratepayer covers the cost of the \$5,000,000 performance bond, \$1,000,000 in annual Pub Ed expense as well as the Call Center, Billing and commercial/residential bad debt exposure. Carving out “Commercial Organics” revenue in favor of CivicCorps reduces MMO revenue and margin to fund the embedded costs as referenced above and would result in an increase in rates to the remaining MMO ratepayers. We request the Mayor, Councilmembers and Staff consult the City Attorney regarding the propriety of moving forward with this Agenda Item.
- Sub-Contracting: Under our Local 70 Collective Bargaining Agreement, subcontracting of bargaining unit or jurisdictional work is prohibited. Additionally, all Alameda County Local 70 CBA’s mirror the WMAC Local 70 Agreement and an amendment to one is an amendment to all and would require approval from Local 70 members at WMAC, AVI, ACI, Republic, CWS and Livermore Sanitation.

As stated above, if awarded the MMO and RR service groups, WMAC looks forward to partnering with CivicCorps as part of the Oakland Zero Waste initiative as well as other internships and job-training programs currently supported by WMAC.

4. Eliminating the “Lock-Out Loophole” from WM's Proposal

In CWS’ eagerness to “*say anything to get any portion of the Oakland contract(s)*”, CWS has made yet another false and disparaging statement towards Staff and WMAC. Our continued discussions and negotiations with Staff last week resulted in the elimination of force majeure language regarding “lockouts” in the draft MMO, RR and Disposal contracts.

We appreciate CWS’ continued references to WMAC’s 2007 lockout but would like to remind everyone of CWS’ 5-week strike in 1998 and its efforts to hire strikebreakers when it refused to honor its commitment to its employees and its contractual commitment with the City of Oakland to pay its recycling workers’ Oakland’s Living Wage and to provide healthcare benefits.

5. CWS’ Claims that Meeting the City’s Zero Waste Initiative is not “Rocket Science”

In CWS’ letter, it states that the “*The collection, processing and disposal of solid waste are hardly rocket science. It has been done for years and both CWS and WM are capable of doing the work*”. We strongly and respectfully disagree and are extremely concerned with CWS’ dismissive comments.



WMAC is Oakland's incumbent company with (a) all the infrastructure and assets already in place necessary to meet the City's Zero Waste initiative (b) qualified employees and management team, (c) 100 years of experience in the City of Oakland, (d) ample redundancies and resources, (e) necessary capital and cash flow; and, (f) a wealth of industry knowledge which has led to WMAC being part of the largest environmental service provider in the Country. Nonetheless, we are extremely humbled by, and cautious of, the awesome responsibility, obligations and effort needed to implement the most progressive Zero Waste initiative in North America. To ensure we are successful, we have hundreds of employees and third parties ready to jump in and implement our plan in the event we are awarded the MMO and RR contracts.

And, contrary to CWS' uninformed statement, it will, in fact, require "*rocket science*", or at least WMAC's decades of experience in large and complex municipal waste contracts, to economically, effectively and lawfully manage every fraction of Oakland's waste stream with a view towards greater diversion and reuse in order to fully achieve Oakland's Zero Waste goals. The stakes are high with hundreds of millions of dollars in required investments, looming liquidated damages for failing to meet contractual requirements and the overarching consideration to get Oakland to **Zero Waste**. Managing capital investments, ensuring there is sufficient recovery with minimal contamination, dealing with uncertainty in the commodities markets, constant changes in the regulatory environments, changes in customers' demands, meeting the needs of our employees, training recycling ambassadors and changing the behavior of our customers to source-separate waste, will be an enormous undertaking that will require full and complete preparation, sufficient resources and significant industry experience. The current staffing and engineering required to manage our Single Stream MRF, Dry Waste MRF, C&D MRF, Multi-Family MRF, Organics processing, Covered Anaerobic Static Pile composting, Altamont's landfill gas to natural gas plant as well as the future staffing and engineering for our Anaerobic Digester and Mixed Material MRF is significant.

Moreover, solid waste management is considered one of the most critical elements in meeting environmental concerns throughout the world. Indeed, California alone has one of the most comprehensive regulatory processes for managing waste streams, which is intended to ensure environmental compliance as well as meet aggressive diversion goals. The state Legislature has also declared that the responsibility for solid waste management is a "shared responsibility between the state and local governments." (Public Resources Code section 40001). The City of Oakland has embraced this responsibility in adopting its Zero Waste Policy, and in authorizing the implementation of Zero Waste Services through the current procurement process. Achieving these goals requires partnering with a provider who understands the complexity of the requirements, and has the attitude, assets, and experience to meet those requirements. WMAC has those qualities and would never dismiss the City's objectives as elementary.

6. Processing and Disposing of Trash on July 1, 2015

After nearly two years of review and negotiation, and after providing CWS an opportunity to revise its proposal and bid on services not included in its original response – an opportunity not given to any other proposer – the City Zero Waste Services staff once again concluded that awarding WMAC all three contracts "... is the most **practicable and prudent** option to deliver service on July 1, 2015,



would provide the best value for the Oakland ratepayers and the best customer experience, while meeting the City's adopted Zero Waste goal." CWS' confusing and impractical "Option 3" "... is not the preferred option."

CWS clearly does not like the outcome of this 18-month evaluation process, and has chosen the tactic of "killing the messenger" to avoid confronting the obvious facts. As the Staff Report, signed by the City Administrator, concluded:

"WMAC is the sole proposer with qualified experience in the collection and processing of mixed materials and organics, and disposal of garbage. WMAC owns and operates a permitted 15-acre corporation yard on 98th Avenue in Oakland for dispatch, fueling, and maintenance of trucks, WMAC owns and operates the fully permitted Davis Street Transfer Station in San Leandro, which houses an organics processing facility, and recyclables materials that were not source separated by the residents or businesses."

The Staff report further concluded that awarding WMAC all three contracts would ensure that all services requested in the RFP would start on Day One and would provide the best value to the ratepayer. As the report stated: *"Option 1 provides a superior approach to achieving the City's Zero Waste goal. On day one of the contract, WMAC will process multi-family mixed materials to divert materials from the landfill and return them to the economic mainstream. WMAC's long-term plan for organics diversion far exceeds diversion proposed by CWS in Option 3."*

By contrast, CWS' *"[p]lan C engages a number of entities woven together with varying levels of assurances and agreements. Additionally, required permits from regulatory agencies have not been secured, leaving this option in less than strong standing. With Option 3, mixed material processing would be delayed for five years, until the Gateway Facility is open, seriously impeding the City achievement of its Zero Waste diversion goals."*

The City of Oakland has put considerable time and effort into developing and adopting a policy that if properly implemented will make Oakland one of the greenest cities in the Country, which is an admirable accomplishment particularly in a state sensitive to the impacts of climate change and carbon footprint reduction. Its focus through this complex and elongated procurement process has been to solicit and evaluate proposals that best achieve the City's Zero Waste goals, provide continued exemplary service and control costs that the City knew would inevitably increase over current rates. One proposer can meet these goals on **Day One**; the other admittedly cannot. This distinction is beyond debate. We encourage the Council to keep these collective objectives in mind when awarding the contracts, and to not get distracted by irresponsible and inaccurate statements.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry Skolnick".

Barry Skolnick, Area Vice President
Waste Management of Alameda County, Inc.
cc: Zero Waste Committee

Kaplan, Rebecca

From: Tucker, David <DTucker2@wm.com>
Sent: Tuesday, July 29, 2014 11:41 AM
To: Zero Waste RFP; Kalb, Dan; Brooks, Desley; Office of the Mayor; Kernighan, Pat; Reid, Larry; Schaaf, Libby; McElhaney, Lynette; Gallo, Noel; Kaplan, Rebecca
Cc: Ortiz, Celso; Kent Alm; Ric Hutchinson; Slote, Peter; Gagliardi, Mark; Kattchee, Susan; Gardner, Henry; Levin, Brooke A.; Kattchee, Susan; Skolnick, Barry; John Smith; Bohn, Jason; Longo, Robert
Subject: Waste Management of Alameda County response to CWS letter dated June 25, 2014
Attachments: WMAC Response to CWS 7 25 14 Letter.pdf

Good morning,

Please find attached Waste Management of Alameda County's response to the CWS letter dated June 25, 2014 to Oakland Mayor and members of the City Council.

Should you have any questions or comments, please do hesitate to contact me.

Thank you

David Tucker

Recycling is a good thing. Please recycle any printed emails.

Kaplan, Rebecca

From: Kalb, Dan
Sent: Friday, July 25, 2014 12:45 PM
To: Gardner, Henry
Cc: Levin, Brooke A.; Quan, Jean; Kernighan, Pat; McElhaney, Lynette; Kaplan, Rebecca
Subject: Memo to the Staff_Zero Waste Agreement_7 30 2014_FINAL.pdf
Attachments: Memo to the Staff_Zero Waste Agreement_7 30 2014_FINAL.pdf; ATT4527830.txt

Hi Henry,

Please see the attached memo regarding the pending Zero Waste franchise agreement(s).

On behalf of Councilmembers McElhaney, Kaplan and myself, thank you for considering and responding to our thoughts and questions.

We have submitted a nearly-identical memo to Council for the packet.

Thanks again,
-Dan



CITY HALL ■ 1 FRANK H. OGAWA PLAZA, 2nd Floor ■ OAKLAND, CALIFORNIA 94612

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COUNCILMEMBER ~ DISTRICT 1

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Rebecca Kaplan
COUNCILMEMBER ~ DISTRICT AT LARGE

(510) 238 - 7008

Lynette Gibson McElhaney
COUNCILMEMBER ~ DISTRICT 3

(510) 238 – 7003

July 24, 2014

Henry Gardner
City Administrator

Greetings Henry,

We have received the staff report for the July 30th Special City Council meeting on the Zero Waste Contract, and believe that some critical items of information are still missing. We hope and request that the following information be made available *prior to* the July 30th meeting in order to better inform our decision-making:

- Please include the costs to ratepayers, if any, for the use of the EBMUD waste-to-energy facility in Options 1 or 2 within the staff report. We understand that the EBMUD option is already incorporated into the base rates under Option 3.
- Multi-family building bulky waste pick-up is not addressed in the staff report. We are interested in Council consideration of incorporating scheduled quarterly bulky waste curbside pick-ups at larger multi-family buildings in addition to the building owner initiated pick-ups already incorporated into the base franchise agreement.
- The various options for the provision of a 3rd 'organics' bin for multi-family green waste are not fully costed out in the most recent staff report. We had previously expressed to Waste Management our desire for them to work to bring their cost estimates down for the 'Opt-out alternative. We realize that CWS has incorporated the source-separated green organics bin for multi-family buildings into their proposed multi-family base rates.

We want to make sure the Council has the option of genuinely phasing in the organics green bin at multi-family buildings as follows:

In the first two years of the franchise agreement, the City would require an opt-in for the green bin at no additional cost (this is the base rate for multi-family buildings); in years three through seven of the franchise agreement, we would require an opt-out such that



all multi-family buildings would be provided with a green cart/bin unless they affirmatively opt out (for any reason); in years eight through ten of the franchise agreement, we would have a stronger opt-out such that the green cart/bin would be mandatory, except that multi-family building owners could opt out for specified reasons through a simple waiver process that would eventually be developed in cooperation between the franchisee and the City.

At the May 29th Council meetings, we also requested an “apples to apples” comparison of the two bidding companies, but the staff report does not appear to wholly reflect that request. We understand that the proposal from California Waste Solutions (CWS) includes the following options, but it is not clear what the cost would be to include these options in the proposal from Waste Management of Alameda County (WM):

- Living wages and benefits for all their recycling workers effective July 1, 2015
- Use of the EBMUD facility for dealing with Oakland Commercial Organic waste
- Working with Civicorps on Collection of Commercial Organics
- Third Bin for multi-family buildings as a default option at no additional cost
- In-County call center
- Allowing for an extension of any Zero Waste Franchise Agreement(s) by the City of Oakland

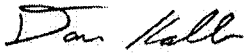
Additionally, in the lower-cost option 3 proposal, CWS has clearly indicated that they are not asking for relief from liquidated damages due to a company-initiated ‘lock-out’. Does the difference in this provision between the two bidders have any impact on the proposed rate structure?

We respectfully request that the following options be costed out and included in all proposed options (Options 1, 2 and 3 as proposed by the City Staff) so that they are available to be considered and voted on at the July 30th, 2014 Special Council meeting:

- (A) Allocating citywide commercial source-separated organics collection and disposal services to Civicorps to be handled at the EBMUD local waste-to-energy facility;
- (B) Multi-family buildings curbside bulky pick-up services to be performed quarterly at times coordinated with building management by both WM and CWS in their designated areas at no additional cost to building residents;
- (C) Multifamily buildings organics collection services be performed as follows: Opt-in incorporated into base rates through June 30, 2017; Opt-out from July 1, 2017 through June 30, 2021; mandatory with a waiver for cause option from July 1, 2021 forward;
- (D) Use of the EBMUD local waste-to-energy facility for handling source-separated organics;
- (E) Versions of the agreement(s) that do not exempt the franchisee from having to pay liquidated damages due to company ‘lock-outs’;
- (F) Versions of the agreement(s) that allow for the extension of any Zero Waste Franchise agreements by the City of Oakland.



Respectfully,



Dan Kalb
Councilmember, District 1



Lynette Gibson McElhaney
Councilmember, District 3



Rebecca Kaplan
Councilmember At-large

cc: Mayor Jean Quan
Council President Pat Kernighan
Brooke Levin, Director, Oakland Public Works
Susan Kattchee



Kaplan, Rebecca

From: Thao, Sheng
Sent: Friday, May 29, 2015 12:03 PM
To: R Kaplan; Kaplan, Rebecca
Subject: OMC - Zero Waste Report for June 2nd Council Meeting
Attachments: OMC Zero Waste - June 2nd Meeting.pdf; OMC Zero Waste_2 - June 2 Meeting.pdf

See attached

Sheng Thao
Office of Vice Mayor Rebecca Kaplan
City of Oakland
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2015 MAY 21 PM 3:26

AGENDA REPORT

TO: John A. Flores
INTERIM CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Municipal Code Amendments Enabling
Implementation of Zero Waste System

DATE: May 20, 2015

City Administrator
Approval

Date

5/21/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and upon conclusion adopt the following legislation:

1. **An Ordinance Amending Oakland Municipal Code Chapter 8.28 ("Solid Waste Collection And Disposal And Recycling"), To Implement The Zero Waste System Design And Zero Waste Collection Services Franchise Contracts, By: 1) Establishing a Nuisance Abatement Process to Address Failures to Ensure Proper Handling of Solid Waste; 2) Restricting Collection Of Commercial Organic Materials To Authorized Collectors; 3) Changing Definitions And Other Provisions To Allow For Regulation Of Commercial Recyclers And Non-Exclusive Franchise Haulers Of Construction And Demolition Debris, And 4) Conforming the new Zero Waste System to The Zero Waste Collection Services Franchises Awarded By City Council, Services To Begin July 1, 2015.**
2. **An Ordinance Amending Oakland Municipal Code Chapter 15.34 ("Construction And Demolition Debris Waste Reduction And Recycling Requirements") To Establish A Non-Exclusive Franchise Agreement System For The Hauling Of Such Debris To Become Effective July 1, 2015; And Authorizing The City Administrator To Execute Such Non-Exclusive Franchise Agreements.**

OUTCOME

The City Council's adoption of the proposed ordinances would ensure that the OMC fully conforms to the three franchise contracts approved by the City Council and executed by the City Administrator, when the franchise services begin, on July 1, 2015.

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In addition, the ordinances would enable establishment of a permit system for commercial recycling collection services and a non-exclusive franchise system for the hauling of C&D debris.

Together, approval of the amended ordinances and the non-exclusive franchise agreement for the hauling of C&D debris would enable full implementation of the Zero Waste System as previously approved by the City Council, effective July 1, 2015.

EXECUTIVE SUMMARY

The proposed Oakland Municipal Code (OMC) amendments fall into the following categories:

1. Changes, as contained in Chapter 8.28 of the OMC, needed to implement the Zero Waste System and the new franchise contracts for Mixed Materials and Organics (MM&O) and Residential Recycling (RR) collection services, including changes that:
 - A. Establish a new special assessment system to address to address nuisance conditions created by failure to properly handle solid waste .
 - B. Restrict commercial organic materials collection to MM&O contractor
 - C. Allow regulation of commercial recycling collection services
 - D. Conform to the definitions, terms and provisions of the MM&O and RR franchise contracts
2. Changes needed to enable a non-exclusive franchise system for the collection of construction and demolition (C&D) debris, as contained in Chapter 15.34 of the OMC.

BACKGROUND/LEGISLATIVE HISTORY

On January 17, 2012, the City Council approved Resolution No. 83689 C.M.S. (*Attachment A*), adopting a Zero Waste System design that incorporates:

- Three exclusive franchises
 - Mixed Material and Organics Collection Services
 - Residential Recycling Collection Services
 - Disposal Services
- A commercial recycling permit system for hauling of recyclables
- A non-exclusive franchise system to regulate C&D debris hauling activities

Following a Request for Proposals process, the City Council adopted the following ordinances to award the three exclusive franchises described in the Zero Waste System:

- 1) Ordinance No. 13258 C.M.S., adopted on September 29, 2014, awarded the Mixed Materials and Organics (MM&O) Contract to Waste Management of Alameda County (WMAC), by amending Ordinance No. 13253 C.M.S., which had previously awarded the

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MM&O Contract to California Waste Solutions (CWS). This ordinance was amended on December 9, 2014, by Ordinance No. 13273 C.M.S., to add contamination rates to the maximum service rates.

- 2) Ordinance No. 13254 C.M.S., adopted on August 13, 2014, awarded the Residential Recycling (RR) Contract to CWS. This ordinance was amended on December 9, 2014, by Ordinance No. 13274 C.M.S., which changed the term of the RR contract from 10 years with two five-year extensions, to 20 years
- 3) Ordinance No. 13259 C.M.S., adopted on September 29, 2014, awarded the Disposal Contract to WMAC, by amending Ordinance No. 13255, which had previously awarded the Disposal Contract to CWS.

This report and adoption of the attached Ordinances would establish

- A commercial recycling permit system (Chapter 8.28), and
- A non-exclusive franchise system to regulate C&D debris hauling activities (Chapter 15.34).

ANALYSIS

OMC Chapter 8.28 addresses the requirements for handling of solid waste, organics, and recyclables, and was last amended in 1995 to conform its provisions to the then newly executed solid waste franchise agreement. This Chapter now requires amending to conform to the Zero Waste System and the new franchise contracts prior to service commencement on July 1, 2015, and to implement a permit system that will regulate commercial recycling collection services as part of the Zero Waste System. The proposed changes fall into the categories listed below.

- A. Establish a new special assessment system to address delinquent accounts
- B. Restrict commercial organic materials collection to MM&O contractor
- C. Allow regulation of commercial recycling collection services
- D. Conform to terms and provisions of the MM&O and RR franchise contracts

OMC Chapter 15.34 was adopted in 2000 to establish recycling requirements for C&D debris. Chapter 15.34 now requires amending to create a non-exclusive franchise system for C&D debris hauling, as part of the Zero Waste System adopted in 2012.

The content of these proposed changes is summarized below.

- *Chapter 8.28 – Solid Waste Collection and Disposal and Recycling Discussion*
 - A. *Establish a New Special Assessment System to Address Nuisance Conditions Created by Failure to Properly Handle Solid Waste*

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The MM&O contract contains extensive language describing a new system for handling residential garbage bills that become delinquent, created in order to protect the City from ongoing liabilities related to collection of these delinquencies. Under the current system the City pays delinquent amounts to WMAC following the close of each quarterly billing period, and the City then collects the delinquent amounts from property owners pursuant to a lien process. The Zero Waste System shifts this responsibility from the City to the MM&O collector, which is now authorized to terminate service for non-payment.

The potential for service termination creates the need for the newly developed nuisance abatement special assessment process. The new system requires several technical changes to OMC Sections 8.28.170 through 8.28.260. These changes are expected to have little impact on the experience of a customer whose bill becomes delinquent. The ordinance would authorize the City to subscribe to collection service on behalf of the property owner if the property owner fails to ensure that solid waste is properly handled, either by maintaining collection service or self-hauling waste pursuant to a permit. This process is designed to abate the nuisance conditions on the property and protect against the public health and safety risks posed by the accumulation of solid waste. The ordinance would authorize the City to recover the costs of subscribing to service, including administrative costs, as a special assessment against the property. Under the new system, WMAC has an increased incentive to quickly resolve billing errors and disputes directly with customers, since WMAC must collect the initial delinquent bill from customers.

Old (Lien) System Description

Under the current lien system, billing is in advance of service and bills become delinquent if the customer does not pay WMAC within 90 days. Following the close of each quarterly billing period, the City pays delinquent amounts to WMAC and pursues collection of delinquent amounts from customers through property liens. Prior to the City placing a property lien through the County Assessor, customers may pay the delinquent amounts plus fees to the City. However, once the City places a lien, the customer must clear the lien by paying the County Assessor the delinquent amount plus County and City fees. Approximately 9,000 residential accounts in Oakland are delinquent every billing quarter.

New (Special Assessment) System Description

Under the new special assessment system, billing is still done in advance, however, bills become delinquent if not paid within 45 days. WMAC will notify the City of its intent to stop service to delinquent customers, and the City will initiate a process to (a) subscribe to services on behalf of any such customer in the next billing period, and (b) place a special assessment on the property, which includes the cost of services for which the City has subscribed, plus fees. Prior to the City placing a special assessment with the County Assessor, customers may pay the City-subscribed amounts plus fees to the City. Once the City places a special assessment, the City-subscribed amounts plus fees will be payable to the County Assessor on the next annual property tax bill. The City will remit payment to WMAC monthly, for payments for assessments that are received from the County Assessor.

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A customer whose bill becomes delinquent will still owe the initial delinquent amount plus late fees to WMAC, and will separately owe the City-subscribed amounts plus fees as described above. City-subscribed service through this special assessment system continues until the customer settles the original delinquent payment with WMAC and reinstates service. Additionally, under the new system WMAC is paid for City-subscribed service only after the City receives payment rather than at the close of each quarter, which provides an additional incentive to WMAC to quickly resolve billing errors and disputes directly with customers.

B. Restrict Commercial Organic Materials Collection to MM&O Contractor

The design of the Zero Waste System included commercial organic materials to be part of the exclusive franchise (MM&O contract), because organic materials were identified as the top material the City needed to divert from landfill disposal to meet the Zero Waste goal.

The MM&O contract is an exclusive agreement for collection and processing of all mixed materials (i.e., garbage) and organic materials generated in Oakland. However, under current OMC Chapter 8.28 provisions, organic material is listed in the definition of "Recyclable Materials." Therefore, to make collection of commercial organic materials an exclusive service of the MM&O contract, revisions are required in several sections of OMC Chapter 8.28, to decouple organic material from recyclable material and to subject organic materials to many of the same regulations that apply to mixed materials, solid waste, or garbage, since improperly stored or transported organic material can pose a risk to public health and safety.

C. Allow Regulation of Commercial Recycling Collection Services

The Zero Waste System included a recommended permit system that would regulate commercial recycling collection services, enabling the City to establish and enforce waste diversion, reporting, and other performance standards. The permit system does not change the access to customers or operation methods of the long-established independent recycling collection companies.

The permit system will be developed, per OMC Sections 8.28.030.C, and regulations governing commercial recycling collection services will be presented to City Council for consideration by resolution after community stakeholder meetings are conducted. It is anticipated that this resolution will be brought to City Council in fall 2015, and include administrative costs and expenses.

D. Conform to Terms and Provisions of the MM&O and RR Franchise Contracts

In addition to the proposed amendments discussed above, many changes are proposed to the text of OMC Chapter 8.28 to ensure consistent usage of terms, and to fully reflect the provisions of the Zero Waste System and the related contracts that have been approved by City Council.

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In particular, the change of the “garbage” contract from one that addresses collection and disposal of “Solid Waste and Yard Waste” to one that addresses collection and processing of “Mixed Materials and Organic Materials” requires a multitude of changes that must fit together, providing cohesive language for the reader. All of the changes made for conformity have been anticipated throughout the Zero Waste System design and Request for Proposals process.

• Chapter 15.34 – Construction and Demolition Debris Waste Reduction and Recycling

The Zero Waste System design includes a non-exclusive franchise system that is intended to cover collection of all C&D debris, including both solid waste/ mixed materials and recyclable materials. Currently, collection of source separated recyclable materials from construction sites is not regulated by the City. With certain exceptions, collection of solid waste from construction sites is a service exclusive to the current solid waste franchisee.

The new system will allow independent service providers to collect all non-hazardous C&D debris, provided they obtain non-exclusive franchise from the City. The new system will allow the City to set performance standards and collect data on disposal and diversion, and should facilitate greater compliance with the City’s existing C&D Debris Waste Reduction and Recycling Ordinance (OMC Chapter 15.34). It will also provide builders and developers more options for competitively priced hauling and recycling services, and allow the non-exclusive franchised service providers improved access to materials they can recycle.

The non-exclusive franchise system would permit and regulate collection and hauling of all C&D debris, with exceptions for materials hauled by property owners or their employees, recyclable materials that are segregated by material type for collection (e.g., scrap metals), and materials hauled by general and trades (e.g., electrical, plumbing) contractors as an incidental part of their work. All demolition contractors and trucking companies that collect and haul C&D debris would be required to obtain non-exclusive franchise. The City requirements for non-exclusive franchisees would include:

- complying with all applicable laws and regulations;
- reporting to both the City and customers on all materials collected by weight or volume;
- maintaining insurance and a City business tax license;
- payment of an application fee plus administrative fees based on number of loads collected; and
- standards for cleanliness and maintaining markings on collection vehicles and collection containers to clearly identify the collector.

Staff is proposing to implement this system as an 18-month pilot program, beginning July 1, 2015. In June 2015, staff will begin notifying known C&D debris hauling or collection service providers of the new system, including making non-exclusive C&D franchise applications

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available once the ordinance receives final approval. Beginning in July, when the non-exclusive C&D franchise system is in effect, staff will receive and process applications, execute agreements, and continue to notify and recruit C&D debris collection service providers.

During the pilot period, staff will collect data to assess the effectiveness of the program, survey stakeholders, and determine what changes should be made to ensure long-term viability of the program for the C&D debris collection service providers, their customers, and the City. It is expected that the ongoing evaluation during the pilot period will inform needed changes to the non-exclusive franchise agreement language, municipal code, and administrative processes used to manage the system. Fees during the pilot will include an application fee of \$500, an administrative fee of \$10/load of C&D debris hauled, and a franchise fee of 1% of total billed C&D collection services in Oakland.

Collection of administrative and franchise fees would begin on January 1, 2016 to allow time to bring service providers into compliance and provide a level playing field for those that have an agreement in place earlier than others.

To establish the non-exclusive franchise system for collecting C&D debris, OMC Chapters 8.28 and 15.34 must be amended to define C&D debris as distinct from mixed materials and organic materials, and therefore not subject to the exclusive MM&O contract. In addition, several definitions were refined to distinguish between collection of recyclable C&D debris that would be regulated through this non-exclusive franchise system, and recyclables that are source-separated by material type, which would be regulated through the commercial recycling permit system, which is discussed in item C of this Analysis section. The proposed OMC amendments describe the parameters of the system, and clarify and establish appropriate exceptions.

In addition, per City Charter Article X, the procedure for granting franchises requires City Council approval by ordinance. To implement the pilot program staff proposes that the City Council authorize the City Administrator to grant the non-exclusive franchises for collection of C&D Debris and to execute the individual agreements based on the terms and conditions of the model agreement (*Exhibit A*) attached to the draft ordinance that amends OMC Chapter 15.34. Essentially, the City Council would be delegating a blanket authority for the issuance of the non-exclusive franchises to the City Administrator. All franchisees would be held to the same terms and conditions.

Next steps for implementing the proposed pilot and developing a permanent system are:

- June 2015 – Begin notification/recruitment of C&D debris hauling or collection service providers
- July 1, 2015 – Non-Exclusive Franchise (NEF) system in effect: receive & process applications, execute NEFs
- July – December 2015: Continue notification/recruitment of collectors, executing NEFs
- January 2016 – Begin collection of administrative and franchise fees

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- July 2015 – August 2016: Evaluate pilot data, conduct stakeholder input
- Fall 2016 – Report to City Council: pilot findings & recommend permanent system

PUBLIC OUTREACH/INTEREST

The proposed OMC amendments would implement City Council policies and programs that were adopted through a series of resolutions and ordinances, which were each properly noticed. No additional public outreach was conducted regarding these proposed OMC amendments.

COORDINATION

This report, including attachments and exhibits, was developed with the participation and review of staff from the Finance Department Revenue Division and Human Resources Department Risk Management Division, the Planning and Building Department Building Services Division, and the Office of the City Attorney.

COST SUMMARY/IMPLICATIONS

Administration of the C&D non-exclusive franchise system pilot initially will be through use of existing Recycling Program staff, although it is expected to require up to an additional 0.5 FTE to manage at full implementation. Additional staffing needs will be evaluated during the pilot period, including the adequacy for cost recovery from the application fee, which is effective July 1, 2015, and for the administrative fee, which will become effective January 1, 2016. The franchise fee of 1% of total billed C&D collection services in Oakland will also be evaluated during the pilot period.

Administration of the regulation of commercial recycling collection services initially will be through use of existing Recycling Program staff, although it is expected to require up to an additional 0.25 FTE to manage at full implementation.

Administration of the new special assessment system to address delinquent garbage accounts by the Revenue Division will be funded through cost recovery administrative fees included in the Master Fee Schedule, as they are in the existing lien system.

SUSTAINABLE OPPORTUNITIES

Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

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Social Equity: Increased oversight of recycling and C&D debris hauling companies can improve the impacts on the community.

CEQA

City staff from Public Works and Planning & Building determined that the City Council's actions are exempt from the California Environmental Quality Act (CEQA) because continuation of existing programs, but with greater environmental benefits may be achieved through: 1) award of an exclusive franchise agreement for mixed materials and organics collection; 2) award of non-exclusive franchises for collection of construction and demolition debris; and 3) regulation of commercial recyclers through a permit system. These added environmental benefits are created by diverting greater amounts of recyclables, organics, and construction and demolition debris from landfill disposal, and reducing illegal dumping.

The City has independently reviewed, considered and confirmed the environmental analyses conducted for Ordinance No. 13258 C.M.S. (see September 22, 2014 Agenda Report Attachment D); this analysis concludes that there would not be the potential for significant environmental impacts, therefore no further environmental review is required. Specifically, the projects are exempt from CEQA pursuant to the following CEQA Guidelines, each of which provides a separate and independent basis for CEQA compliance and when viewed collectively provide an overall basis for CEQA compliance:

- Section 15301: Ongoing operation of existing facilities;
- Section 15307: Action for the protection of natural resources;
- Section 15308: Action for the protection of the environment;
- Section 15183: Approvals consistent with Community Plans; and/or
- Section 15061(b)(3): Common sense exemption because project does not have potential to cause significant effect on the environment

For questions regarding this report, please contact Becky Dowdakin, Environmental Services Manager, 510-238-6981.

Respectfully submitted



BROOKE A. LEVIN
Director, Public Works Department

Reviewed by:
Susan Kattchee, Assistant Director

Prepared by:
Becky Dowdakin, Environmental Services Manager

Prepared by:
Mark Gagliardi, Senior Recycling Specialist

Attachment A – Resolution No. 83689 C.M.S.

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June 2, 2015

REVISED

Attachment A

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 DEC 20 PM 12:46 **OAKLAND CITY COUNCIL**

RESOLUTION No. 83689 - C.M.S.

Approved as to Form and Legality

City Attorney

**RESOLUTION ADOPTING THE RECOMMENDED SYSTEM DESIGN TO
MEET THE ADOPTED ZERO WASTE STRATEGY - DEVELOP A NEW
WASTE MANAGEMENT SYSTEM DESIGN IN PREPARATION OF
OAKLAND'S NEXT COLLECTION AND DISPOSAL CONTRACTS**

WHEREAS, the City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County, and the Agreement for Residential Recycling Service with California Waste Solutions expire on June 30, 2015; and

WHEREAS, in 2006 through Resolution No. 80286 C.M.S. the City Council adopted a Zero Waste Strategic Plan that included Strategy 2, Develop and Adopt New Rules and Incentives to Reduce Waste Disposal, which states: "Development and adoption of a new waste management system design in preparation for Oakland's next collection and disposal contract is key to the goal of reducing waste;" and

WHEREAS, the City will use a request for proposals procurement process to secure future solid waste, organic material, and recycling collection, processing and disposal services; and

WHEREAS, in 2009 through Resolution No. 81870 C.M.S. the City Council adopted Evaluative Criteria for assessing Zero Waste system models to replace the expiring franchise and recycling agreements, and directed staff to use these criteria in assessing Zero Waste system models and present a preferred model to Council for consideration; and

WHEREAS, in 2000 the City of Oakland disposed of 421,000 tons in landfills, and 291,000 tons in 2010, a reduction of 130,000 tons per year; and

WHEREAS, Alameda County 2008 Waste Characterization Study identifies organic material as the largest remaining recoverable material type, representing 49% of Oakland's total landfill disposal, or approximately 100,000 tons landfilled in 2010; and

WHEREAS, solid waste generated by multifamily dwellings and commercial businesses is rich in organic material that is primarily food and food-soiled paper; and

WHEREAS, diversion of organics from landfill represents the greatest opportunity for waste diversion and material recovery; and

WHEREAS, mandates on multi-family dwelling building owners and businesses to ensure recycling at their buildings and businesses are likely to be implemented by the state and/or

Alameda County in the near future, and greater access to recycling and organics collection services will be needed to comply with these mandates; and

WHEREAS, multifamily dwellings provide a significant challenge to the provision and use of recycling services because the building owner must allow the recycling containers to be placed on the property, overcome space constraints, promote the service to tenants, and address improper use; and

WHEREAS, the tenant turnover rates in multifamily dwellings requires constant renewal of public education and information on recycling programs, and

WHEREAS, other communities have used processing of mixed materials for multifamily dwellings to significantly improve waste diversion from this sector; and

WHEREAS, according to analysis of landfill tonnage data from the State and Oakland franchise tonnage reports, 26% of Oakland's total annual landfill tonnage, or 74,000 tons in 2010, is hauled by parties other than the solid waste franchisee, and consists largely of construction and demolition (C&D) debris; and

WHEREAS, the current system for C&D debris hauling pre-dates Oakland's Construction and Demolition Debris Waste Reduction and Recycling Ordinance, and allows large amounts of C&D debris to be hauled to landfills without any recycling; and

WHEREAS, independent recyclers in Oakland make a significant contribution to Oakland's waste diversion and recycling performance by providing valuable recycling collection services to Oakland businesses; and

WHEREAS, there are businesses in Oakland that generate organic by-products that are used on farms and destinations other than solid waste or composting facilities, providing environmental and community benefits; and

WHEREAS, continued voluntary efforts alone are unlikely to result in satisfactory progress toward Oakland's Zero Waste Goal; now therefore be it

RESOLVED: that the City Council adopts the Zero Waste System Design described in the report dated November 29, 2011 to be used in a Request for Proposals process, that will reduce landfill disposal to 120,000 tons per year by 2030, a reduction of 170,000 tons per year, that has these elements:

1. A single franchise for citywide garbage and organics collection services capable of maximizing diversion of organics and minimizing landfill disposal of garbage, and provides recycling services to Oakland businesses on a non-exclusive basis.
2. A single franchise for citywide residential recycling focused on maximizing recycling, particularly in the challenging multifamily sector.
3. Landfill capacity procured separately from collection and processing services to attract the broadest pool of proposers on the garbage and organics franchise, by eliminating landfill ownership as a barrier.

4. A permit system to regulate commercial recycling services to continue operation of the long-established independent recyclers, and allow the City to establish and enforce waste diversion and other performance standards.
5. A non-exclusive franchise system to regulate construction and demolition (C&D) debris hauling activities, allow the City to establish and enforce waste diversion and other performance standards, and to stimulate broader use of mixed debris processing facilities in the region.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 17 2012, 20

PASSED BY THE FOLLOWING VOTE:

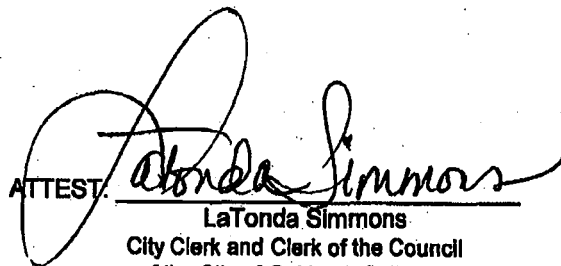
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST.


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 MAY 21 PM 3:26

APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.28 ("SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING"), TO IMPLEMENT THE ZERO WASTE SYSTEM DESIGN AND ZERO WASTE COLLECTION SERVICES FRANCHISE CONTRACTS, BY: 1) ESTABLISHING A NUISANCE ABATEMENT PROCESS TO ADDRESS FAILURES TO ENSURE PROPER HANDLING OF SOLID WASTE; 2) RESTRICTING COLLECTION OF COMMERCIAL ORGANIC MATERIALS TO AUTHORIZED COLLECTORS; 3) CHANGING DEFINITIONS AND OTHER PROVISIONS TO ALLOW FOR REGULATION OF COMMERCIAL RECYCLERS AND NON-EXCLUSIVE FRANCHISE HAULERS OF CONSTRUCTION AND DEMOLITION DEBRIS, AND 4) CONFORMING THE NEW ZERO WASTE SYSTEM TO THE ZERO WASTE COLLECTION SERVICES FRANCHISES AWARDED BY CITY COUNCIL, SERVICES TO BEGIN JULY 1, 2015.

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

WHEREAS, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion goal of seventy five (75) percent by 2010; and

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., adopting a goal of 75% reduction of waste going to landfills by 2010 in support of the Measure D goal, and the implementation date established by the Alameda County Source Reduction and Recycling Board; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. adopting a Zero Waste Goal by 2020; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and

WHEREAS, in 2012 the City Council of the City of Oakland approved Resolution No. 83689 C.M.S., establishing Zero Waste System Design; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a), the Oakland City Charter Article X, and Oakland Municipal Code Chapter 8.28, the City determined that the public health, safety, and well-being require that an exclusive right be awarded to qualified contractors to provide for the collection of Mixed Materials and Organics and for the collection of Residential Recycling and that commercial recyclers and collection of construction and demolition debris shall be provided pursuant to a non-exclusive system, all in order to meet the requirements of the Act and the City's Zero Waste Goal by 2020, and to implement the Zero Waste Strategic Plan and the Zero Waste System Design; and

WHEREAS, the new Zero Waste System makes various changes to the manner in which solid waste is regulated handled and solid waste collection services are made available to the public, which therefore requires that Chapter 8.28 of the Oakland Municipal Code, entitled "Solid Waste Collection and Disposal and Recycling," be amended to implement the new system.

WHEREAS, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant, CEQA Guidelines section 15301, CEQA Guidelines section 15307, CEQA Guidelines section 15308, CEQA Guidelines section 15273, CEQA Guidelines section 15183, and/or CEQA Guidelines section 15061 (b) (3); and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying environmental analysis dated July 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 8.28 ("Solid Waste Collection and Disposal and Recycling") of the Oakland Municipal Code is herein provided, with additions underscored and deletions ~~stricken through~~.

Chapter 8.28 - SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING

8.28.010 - Definitions.

For the purpose of this chapter, certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:

"Bulky goods" means materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household

appliances, including appliances containing freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, large plant debris, and corrugated cardboard.

"Business" means of or pertaining to a commercial establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.

"City" means the city of Oakland, and such territory outside the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

"City Administrator" means the City Manager of the city of Oakland; further provided, that the use of the title of any officer or to any office shall refer to such officer or office of the city of Oakland.

"Collect" or "Collection" means to pick up discarded material.

"Collector" means the solid waste and yard waste collector franchised by the city.

"Commercial" means of or pertaining to a business establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.

"Commercial recycler" means a person who or entity that has complied with the requirements of the city to collect and transport recyclable materials from commercial entities in the city.

"Construction and demolition debris" means waste building materials resulting from construction, remodeling, repair or demolition operations on any house, residential property, commercial building, pavement or other structure for which the city requires a building or demolition permit, or from a non-permitted municipal project. Construction and demolition debris includes but is not limited to rocks, soils, tree remains and other plant debris which results from land clearing or land development operations in preparation for construction.

"Director" means the Director of Public Works of the city, or his or her authorized representatives.

"Container" means a bin, cart, roll-off box, compactor or other vessel approved by the city for use in containing materials set out for collection.

"Customer" means the person subscribing to collection services.

"Director" means the person or persons designated by the City Administrator to administer this chapter. The City Administrator may designate multiple persons to administer individual provisions of this chapter.

"Discarded material" means garbage, mixed materials, recyclable materials, organics or bulky goods generated at a premises and placed in a manner and location that is designated for collection.

"Disposal" or "Dispose" means the disposition of mixed materials, solid waste, and residue at the disposal facility, or (a) the placement of any materials collected in landfills, including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, section 20686 (as it may be amended from time to time); or (b) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T (as it may be amended from time to time).

"Disposal facility" means the sanitary landfill, or other solid waste disposal facility, utilized for the receipt and final disposition of some or all of the solid waste mixed materials, garbage and residue collected or accepted.

"Dwelling" means a residence, flat, apartment, or other facility used for housing one or more persons in the city.

"Finance Officer" means the Director of the Office of Budget and Finance of the city, or his or her authorized representatives.

"Divert", "diverted," or "diversion" means the avoidance of (a) disposition in a landfill including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, section 20686 (as it may be amended from time to time); (b) "transformation" as defined by Public Resources Code section 40201 (as it may be amended from time to time); or (c) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T (as it may be amended from time to time).

"Dwelling unit" means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. Dwelling units include live/work units, as defined by Oakland Planning Code section 17.65.160 (as it may be amended from time to time). Dwelling units do not include work/live units, as defined by Oakland Planning Code Section 17.65.150, which are considered commercial.

"E-waste" means waste that is powered by batteries or electricity, such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, calculators and other items that the California Department of Toxic Substances Control has determined, or determines in the future, to be a covered electronic device under Public Resources Code section 42463 (as it may be amended from time to time).

"Finance Officer" means the city revenue representative designated by the City Administrator.

"Fixed body vehicle" means any wheeled motor vehicle that does not rely on a roll-off box or other detachable container to collect, contain and transport material.

"Generator" means a person, commercial business or any other entity that produces solid waste, mixed materials, organic materials, bulky goods or recyclable materials.

Hazardous Waste.

1. "Hazardous waste" means any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste discarded material after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code (as they may be amended from time to time).

2. "Hazardous waste" shall include, but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local, state or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste" or "toxic substances," or similarly identified as hazardous to human health or the environment including those so defined in or

pursuant to any of the following statutes: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (i) the Comprehensive Environmental Response, Compensation and Liability Act; 49 U.S. Code Section 1801 ("CERCLA") of 1980, 42 USC section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act; California Health & Safety Code Section 25100, et seq. (Hazardous Waste Control); Section 25300, et seq. (the Hazardous Substance Account Act); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); the 49 USC section 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section 25115-25117, 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.; (vii) California Water Code section 13050; and (viii) all rules and regulations adopted and promulgated pursuant to such statutes, and subsequently enacted amendments to or recodifications of such statutes and any regulations subsequently adopted or amended pursuant to these statutes, as well as any subsequently enacted or amended federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances or any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products.

"Material recovery facility" means any plant or site used facility approved by the city that is designed, operated and legally permitted for the purpose of sorting, cleansing, treating or reconstituting recyclables and returning them to the economy, receiving and processing recyclable materials, organic materials or mixed materials.

"Medical waste" means all materials defined as medical waste in the California Health & Safety Code Section 25023.2, not including waste identified as not being medical wastes in Sections 25023.5 and 25023.8, or the regulations promulgated thereunder, as amended from time to time.

"Multi-family Mixed materials" means all materials that are set out by the service recipient for collection by the MM&O collector excluding items that are source separated. Mixed materials do not include items defined herein as construction and demolition debris or unacceptable waste.

"Mixed materials and organics collector" or "MM&O collector" means the collector that has entered into a MM&O contract with the city to be the exclusive provider of MM&O collection services.

"MM&O contract" means the agreement between the city and the MM&O collector authorizing the MM&O collector to provide MM&O collection services.

"Multi-family dwelling" or "MFD" means any residential structure with five or more living units and/or any residential structure which uses bin service for solid waste collection. (5) or more living units including any flat, apartment, condominium, town home, service-enriched housing or other residence and other dwelling units in detached buildings and excluding a hotel, motel, dormitory, sheltered nursing facility, rooming house or other such similar facility as determined by the city.

"Organic materials" or "Organics" means plant debris, food scraps, compostable food ware, compostable food containers, compostable paper, horse stable matter and other material that are

source separated for collection or for self haul pursuant to Section 8.28.115. Organic materials do not include items herein defined as construction and demolition debris or unacceptable waste.

"Organic recyclable material" means organic materials such as vegetable, fruit, grain, dairy, meat, fish, yard, tree, wood, and nonrecyclable paper discards which are set aside, handled, packaged, or offered for collection separate from solid waste for the purpose of being processed and then returned to the economic mainstream in the form of commodities such as, but not limited to, compost, soil amendments, mulch, animal feed, and fertilizer.

"Owner," when used in reference to a dwelling, "Owner" means the person or persons holding legal title to the dwelling premises.

"Person" means an individual, association, partnership, corporation, joint venture, the United States, the state of California, any municipality or other political subdivision thereof, or any other entity whatsoever.

"Premises" means any land or building in the city where solid waste, yard waste or recyclables organic materials, and/or recyclable materials are generated or accumulated.

"Processing" means an operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares recyclable materials, organic materials, mixed materials or bulky goods and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted products.

"Processing facility" means a facility which has adequate capacity for the receipt, sorting, storage and processing (including without limitation, grinding, chipping, screening, preparation for and performance of composting of yard waste materials) of recyclables so that they may be further processed or sold to end-use markets, approved by the city which is designed, operated and legally permitted for the purpose of receiving and processing collected materials.

"Recyclable materials" means those materials that are source separated for the purposes of being reused or processed into other usable forms, whether the recyclable materials are discarded, donated or sold.

"Residential recycling collector" or "RR collector" means the collector that has entered into a RR contract with the city to be the exclusive provider of residential recycling collection services.

"Residue" or "residual" means materials remaining after the processing of mixed materials, recyclable materials, organic materials or bulky goods which cannot reasonably be diverted.

"RR contract" means the agreement between the city and the RR collector authorizing the RR collector to provide RR collection services.

"Service recipient" means a person receiving collection services.

"Single-family dwelling" or "SFD" means a detached or attached residence containing four (4) or fewer dwelling units when each dwelling unit is designed or used for occupancy by one (1) or more individuals.

Recyclables.

1. "Recyclables" means nonhazardous residential, commercial, or industrial materials or by-products which are set aside, handled, packaged, or offered for collection in a manner different than solid waste for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities.

2. ~~Recyclables include but are not limited to paper (newspaper, magazines, corrugated cardboard, kraft paper, ledger paper, computer print out, box board, and other paper grades); glass; ferrous and nonferrous metal materials; plastic containers, films, packaging materials and scrap; and construction and demolition materials. Recyclables shall include source separated materials and organic recyclable materials.~~

~~"Recycler" means a person or entity which is permitted by the city to collect and transport recyclables or organic recyclable material.~~

~~"Residual" means contaminant material, separated from recyclable material or yard waste, which cannot be recycled, composted, marketed or otherwise utilized, and which shall be disposed of as solid waste, hazardous waste, or medical waste, as appropriate.~~

~~"Single family dwelling" means any dwelling which has four or fewer living units within it and/or those dwellings which use curbside service for solid waste collection.~~

~~"Solid waste" means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, but does not include and includes recyclable materials and organics that have not been source separated recyclables which comply with the residual content limits in Section 8.28.030. Solid waste does not include abandoned vehicles and parts thereof, hazardous waste or low-level radioactive waste, medical waste, or unacceptable waste or yard waste which is source separated at single family dwellings.~~

~~"Source separated" means recyclable materials that have been segregated from mixed materials or solid waste by or for the generator thereof on at the premises at which they were generated for handling different from that of solid waste diversion. This does not require that different types of recyclable commodities be separated from each other, except from organic recyclable material materials.~~

~~"Tenant," when used in reference to a dwelling, means any person or persons, other than the owner, occupying or in possession of the dwelling.~~

~~"Transfer station" means a facility with all appropriate permits utilized to receive solid waste collected materials, to temporarily store, separate, recover, convert or otherwise process the the collected materials comprising the solid waste, and to transfer the solid waste to vehicles for transport to a collected materials to a processing or disposal facility as appropriate.~~

~~"Unacceptable waste" means any and all waste, including but not limited to hazardous waste, household hazardous waste and medical waste, the acceptance or handling of which by collector would cause a violation of any permit condition or legal or regulatory requirement, damage or substantial damage to collector's equipment or facilities, or present a substantial endangerment to the health or safety of the public or collector's employees; provided, that de minimis quantities or waste of a type and amount normally found in solid waste or mixed materials after implementation of programs for the safe collection of household hazardous waste shall not constitute unacceptable waste.~~

~~"Universal waste" or "u-waste" means waste that the California Department of Toxic Substances Control ("DTSC") considers universal waste (California Code of Regulations Title 22, Div 4.5, Ch 23), including materials such as batteries, thermostats, lamps, cathode ray tubes,~~

computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps and certain mercury-containing devices.

~~"Yard waste" means single-family dwelling prunings, brush, leaves, grass clippings and such other similar types of organic waste that may be specified by the city in its reasonable discretion for collection by the collector pursuant to the franchise agreement between the city and the collector. Untreated and unpainted wood which fits within the yard waste container provided by collector is also yard waste.~~

8.28.020 - Procedures for determining maximum rates of compensation.

~~The charge for the collection of solid waste by the collector within the city shall be those A.~~

The charges for the collection of mixed materials, organic materials, bulky goods and recyclable materials by the MM&O collector and the RR collector shall be as determined by, respectively, the MM&O collector and the RR collector although such rates shall not exceed the maximum rates established and adjusted according to procedures established by the City Council. A copy of the adjusted maximum rates shall be filed in the Office of the City Clerk by June 30th of each year by the Finance Officer/Director.

~~A. The current rates are set forth in Section 8.28.290~~

~~B. The current rates shall be adjusted to reflect changes in the Consumer Price Index ("CPI"), as set forth in the franchise agreement between collector and city, as determined by the Finance Officer.~~

~~C. Non-CPI related rate adjustments may be granted by the B.~~ The City Council, in the exercise of its legislative discretion, may authorize the MM&O collector and/or RR collector to impose other related adjustments to the maximum rates, consistent with the terms of the franchise agreement/contracts between the city and the RR collector and the city and the MM&O collector.

8.28.030 - Collection of recyclable ~~or organic~~ recyclable materials.

A. Residential Recyclable Materials. It is unlawful for any person other than the RR collector or those persons employed by the RR collector to collect or transport any recyclable materials from SFD or MFD premises within the city except:

1. Recyclable materials that are removed from any SFD or MFD premises and transported to a transfer station, recycling center, or material recovery facility by the occupant;
2. Recyclable materials that are collected and transported by city crews to a transfer facility, a material recovery facility, or such other appropriate processing facility;
3. Recyclable materials that are source separated at any premises by the generator and donated or sold. Recyclable materials are considered "donated or sold" so long as the person collecting the recyclable materials does not receive a net payment from the generator (including but not limited to any payment for consulting and/or management fees related to the collection of any waste and/or recyclable materials);
4. Beverage containers, other than those set out for collection by the RR collector, that are delivered for recyclable materials under the California Beverage Container

Recyclable Materials Litter Reduction Act, section 14500, et seq. (as it may be amended from time to time);

5. Recyclable materials that are removed from a premises in a fixed body vehicle by a property management, maintenance or cleanup service company as an incidental part of the total on-property cleanup or maintenance service offered by the company rather than as a hauling service;
6. Recyclable materials that are removed from a premises by the MM&O collector as part of the provision of MM&O collection services under the terms of the MM&O contract.
7. Recyclable materials that are removed from a premises by a company through the performance of a service that the collector has elected not to provide;
8. Recyclable materials removed from a premises for no more than a nominal charge by a retailer as an incidental part of a sale of merchandise; and
9. Recyclable materials removed from a premises for no more than a nominal charge by a reuse facility or reuse business.

B. Commercial Recyclable Materials. It is unlawful for any person or entity other than the following to collect or haul any recyclable material from commercial premises within the city: (a) a commercial recycler or those persons employed by a commercial recycler, or (b) the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR Contracts, respectively.

A. Permits. All persons collecting and transporting recyclables or organic recyclable material within the city must hold a valid city business license. Recyclers C. Commercial Recycler Permits. All commercial recyclers collecting and transporting commercial recyclable materials within the city, other than the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR contracts respectively, must hold a commercial recycling permit. A person desiring to obtain a commercial recycling permit shall apply to the Director. The Director shall grant the permit if he or she finds that the applicant has satisfied the applicable requirements specified in the regulations adopted by the City Council governing commercial recyclers and paid the applicable permit fee. The Director may revoke a commercial recycling permit if he or she finds, after providing the permit holder notice and opportunity to be heard, that the permittee has failed to meet the requirements of the permit or has violated any provision of this chapter. Commercial recyclers shall be required to maintain records, in a prescribed format and schedule, documenting that all recyclables or organic recyclable material materials that they collect and transport, less allowable residual, is recycled. Such records shall be maintained in an auditable form for at least three (3) years, and the city shall have the right promptly to examine said records upon written request. Notwithstanding anything to the contrary in this subsection, a commercial recycling permit shall not be required until such time as the City Council has adopted regulations governing commercial recyclers.

BD. Limits on Residual Content. Recyclables or organic recyclable material Recyclable materials collected by commercial recyclers shall be source-separated and recycled at a recycling

facility, that holds all applicable permits, and ~~(1) if mixed paper, may contain no more than ten percent by weight of residual per load; or (2) if commingled recyclables other than mixed paper may contain no more than five percent by weight of residual per load.~~ Any load of recyclables and/or organic-recyclable material which materials that contains more than the aforementioned residual, shall be disposed of in accordance with all applicable laws and regulations. Disputes over whether material should be classified as ~~recyclables or organic recyclable material or solid waste materials or mixed materials~~ will be resolved by the Director. The Director's decision may be appealed to the City Manager-Administrator in writing, explaining the basis of the appeal, within ten ~~(10)~~ days of such decision and the payment of a five hundred dollar (\$500.00) appeal fee. The burden of proof shall be on the person challenging the Director's decision. The City Manager-Administrator or his or her ~~designee~~ designed hearing officer shall hear said dispute and render a written decision ~~which shall be final.~~ It is unlawful for any person except for the collector to collect organic recyclable material, other than wood, mixed with recyclables. However, simultaneous collection of recyclables and organic-recyclable material shall be permitted if said organic recyclable material is placed in a separate watertight compartment of the collection vehicle, which shall be final.

~~C. Service and Permit Fees. Nothing herein shall prevent recycler from charging fees for collection, transporting, and/or processing services rendered for recyclables or organic recyclable materials.~~

8.28.040 - Ownership of ~~recyclable materials.~~

- A. Mixed Materials & Organics Collector. Title to materials collected by the MM&O collector under the terms of the MM&O contract shall pass to the MM&O collector at such time as said materials are placed in a container and/or set out for collection provided, however, title to unacceptable waste shall remain with the generator unless expressly accepted by the MM&O collector.
- B. Residential Recyclables Collector. Title to materials collected by the RR collector under the terms of the RR contract shall pass to the RR collector at such time as said materials are placed in a container and/or set out for collection provided, however, title to unacceptable waste shall remain with the generator unless expressly accepted by the RR collector.

~~Recyclables or organic~~ C. Commercial Recyclers. Title to commercial recyclable materials collected by a commercial recycler shall become the property of the authorized commercial recycler when placed at designated recycling locations for collection by the recycler unless otherwise provided by contract between the authorized commercial recycler and the generator of the materials or his or her agent. A ~~recycling~~ recyclable materials collection container shall constitute a designated recycling location.

8.28.050 - ~~Right of persons to dispose of recyclables or organic-control the handling of recyclable material-materials.~~

- A. Residential Recyclable Materials. Nothing in this chapter shall limit the right of any person to donate, sell, or transport residential recyclable materials that they generate to a facility that holds all applicable permits provided that any such activity is in accordance with the provisions of this chapter.

~~Nothing in this chapter shall limit the right of any person to donate, sell, transport.~~ B.

Commercial Recyclable Materials. Nothing in this chapter shall limit the right of any person to donate, sell, transport, or pay a commercial recycler for the removal of, or otherwise dispose of their own recyclables or organic recyclable material materials they generate on commercial premises the person occupies, provided that any such activity is in accordance with the provisions of this chapter.

8.28.060 - Collection of solid waste mixed materials and organic materials restricted to MM&O collector.

It is unlawful for any person other than the MM&O collector or those persons employed by the MM&O collector to collect or haul any solid waste, and source-separated yard waste from single family dwellings mixed materials, organic materials, or bulky goods from premises within the city except:

- ~~A. Source-separated recyclables, including but not limited to those collected by a person under contract to the city and those collected through private arrangements between the generator and the collector. Loads which consist of mixed paper and which contain more than ten percent by weight of residual shall not be considered source-separated recyclables. Loads which consist of recyclables other than mixed paper and which contain more than five percent by weight of residual shall not be considered source-separated recyclables;~~
- A. Persons who haul mixed materials and organics pursuant to a self-haul permit as set forth in Section 8.28.115 herein.
- ~~B. Construction debris (1) removed from a premises by a licensed contractor as an incidental part of a total construction, remodeling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility;~~
- C. Persons transporting animal waste and remains from slaughterhouses and butcher shops, or grease waste for use as tallow;
- ~~E. By-products D. Persons transporting by-products of sewage treatment, including sludge, grit and screenings;~~
- ~~F. Solid waste or yard waste collected and transported by city crews E. City crews collecting mixed materials, bulky goods, or organic materials and transporting that material to a disposal facility, transfer station, processing facility, or material recovery facility;~~
- F. A person who generates mixed materials, organic materials, or bulky goods and hauls those materials directly to a transfer station or disposal facility by a person who is also the generator of the solid waste; and
- H. A person transporting homogeneous organic by-products such as spent hops or coffee bean chaff which are generated by food product manufacturers and processors delivered to destinations other than solid waste or compost facilities and used as livestock feed

- I. A retailer removing bulky goods from a premises for no more than a nominal charge as an incidental part of a sale of merchandise
- J. A facility or reuse business removing bulky goods from a premises for no more than a nominal charge.

~~H. Recyclables which are donated to a youth, civic or charitable organization.~~

8.28.070 - Transportation of solid waste ~~mixed materials, organics, and recyclable materials on city streets restricted to collector.~~

~~It is unlawful for any person other than the A.~~ It is unlawful for any person other than the MM&O collector or those persons employed by the MM&O collector to transport over or upon the streets of the city any solid waste, ~~or source separated yard waste from single-family dwellings, mixed materials, organic materials, or bulky goods from any premises, produced in the city, except in those cases described in Section 8.28.060.~~

B. It is unlawful for any person other than the RR collector or those persons employed by the RR collector to transport over or upon the streets of the city any recyclable materials from single-family or multi-family dwellings, produced in the city, except in those cases described in Sections 8.28.030 and 8.28.050.

C. It is unlawful for any person other than an authorized commercial recycler or those persons employed by an authorized commercial recycler or the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR Contracts, respectively, to transport over or upon the streets of the city any recyclable materials from commercial premises, produced in the city, except in those cases described in Sections 8.28.030 and 8.28.050.

8.28.080 - City Franchise fees.

~~The city may attach a surcharge on solid waste fees collected by the collector to compensate the city for some or all of the cost of programs to clean up litter and illegal dumping on public streets and rights of way. Said surcharges shall be collected by the collector and remitted to the Finance Officer on a scheduled basis and shall be in the amounts established by the City Council.~~

In consideration of the special franchise right granted by the city to the MM&O collector and the RR collector, to transact business, provide services, use the public street and/or other public places, and to operate a public utility for MM&O and RR collection services, the city may negotiate and collect a franchise fee from the MM&O collector and from the RR collector. The amount and terms of payment of the franchise fee shall be as specified in the award of the franchise, the contract, or both.

8.28.090 - Recycling surcharge fee.

~~The city may attach a surcharge on Solid Waste fees collected by the collector to compensate the city for some or all costs incurred in achieving the waste reduction mandates set by the state of California in the Integrated Waste Management Act of 1989 or any other applicable state or local statute. Said surcharge shall be collected by the collector and remitted to the Finance Officer on a scheduled basis and shall be in the amounts established by the City Council.~~

The city may, pursuant to Public Resources Code section 41901 (as it may be amended from time to time), impose a fee on MM&O customers, to be collected by the MM&O collector, in amounts sufficient to pay the costs of preparing, adopting, and implementing the Alameda

County Integrated Waste Management Plan. The fee shall be enacted by Ordinance.

8.28.100 – Required – Proper solid waste collection and disposal required.

Every owner of any premises in the city in, upon, or from which shall ensure that arrangements are made to properly dispose of the solid waste is created, produced, or accumulated shall dispose of on the solid waste premises through the either maintaining a subscription for regular solid waste collection service of the collector, and shall pay therefor the rate or rates set by the city from the MM&O collector or self-hauling pursuant to a permit issued under Section 8.28.115. Arrangements with the collector shall be made by each such owner for the required collection of solid waste, and such arrangements shall specify the location of the premises, solid waste container types and sizes, and the frequency of collection. Exemptions from required solid waste collection may be granted by the Director. The Director may grant exemptions from the solid waste disposal requirement. The Director may determine that the solid waste created, produced, or accumulated on the premises requires additional containers, and, upon such determination, the owner shall provide them upon written notification from the Director. The additional containers shall meet the requirements set forth in Section 8.28.140. The failure to comply with the requirements of this section is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.

The owner of a single family dwelling or multifamily dwelling must by prior agreement with the collector and with the occupants of such dwellings arrange for the individual, joint, or communal use of solid waste containers thereon and for the payment of solid waste collection rates; and such owner shall be responsible for the payment of the solid waste collection rate or rates to the collector.

8.28.110 - Failure to initiate service or to provide sufficient solid waste containers Exception – Initial occupancy.

The owner of any dwelling shall start service comply with Section 8.28.100 within fifteen (15) days of occupancy of such dwelling the premises. In the absence of service start up by owner If the owner fails to do so within such time period (or such service is terminated or suspended), the Director may give the owner written notification that such service compliance with Section 8.28.100 is required. If service is not initiated the owner fails to either subscribe to solid waste collection service or obtain a self-haul permit within fifteen (15) days from the date of mailing of the notice, then the Director may require the collector to initiate and continue solid waste service for said dwelling. When in the judgment of the Director additional solid waste containers and/or collection services are required, they shall be provided by the owner upon written notification from the Director. The additional solid waste containers shall meet the requirements set forth in Section 8.28.140 the owner shall be deemed to be in violation of Section 8.28.100.

8.28.115 – Self-Haul Permit

An owner or an occupant of any premises may elect to self-haul solid waste and organics generated at the premises directly to a disposal or processing facility holding all applicable permits to accept the material. Any such owner or occupant desiring to do so as a means of satisfying the owner's obligation under Section 8.28.100 shall obtain a permit to do so from the Director. The permit shall authorize the permit holder to self-haul solid waste for a period not to exceed twelve (12) months; require the permit holder to deliver the solid waste to an approved transfer facility or disposal facility and to deliver any organics to a transfer facility, a material recovery facility, or a processing facility for processing; require the permit holder to maintain records indicating such waste was removed from the premises and disposed of and processed consistent with this section or was composted onsite; authorize city officials to inspect the

premises at reasonable periods of time; require the payment of an annual fee, as established in the city's master fee schedule, for the administrative costs to the city associated with issuing the permit and monitoring the self-hauler's operations, including components associated with periodic inspection of the premises; and include such reasonable terms and conditions as the Director may require. The Director may, after providing the permit holder notice and an opportunity to be heard, revoke the self-haul permit if he or she finds that the permit holder has not complied with the terms of the permit. Upon revocation of the self-haul permit, the Director shall order the owner to comply with Section 8.28.100. The Director shall not, for a period of twelve (12) months following the revocation, grant a self-haul permit to a person from whom a self-haul permit was revoked, and, thereafter, the Director is authorized in his or her discretion to deny, or impose additional conditions on, the issuance of a self-haul permit to a person from whom a self-haul permit was previously revoked.

8.28.120 - Frequency of solid waste collection or removal.

Collection of ~~The owner shall ensure that solid waste created, produced, or accumulated on the premises is either collected by the collector from each solid waste container shall be made or properly removed pursuant to a self-haul permit at least once a week or more often as may be required to adequately serve the premises. Exemptions from weekly service may be granted by the Director to those dwellings which produce minimal solid waste and whenever less frequent service will not produce a public health and safety concern. The failure to comply with the requirements of this section is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.~~

8.28.130 - Materials prohibited from solid waste disposal in containers.

~~Hazardous waste, medical waste, unacceptable waste, earth, rocks, batteries waste, u-waste, human waste and other potentially infectious material, and liquid wastes shall not be deposited or placed in solid waste containers. Organic waste of the type produced in the preparation of food shall be drained of all moisture and completely wrapped before it is placed or put in solid waste mixed material, organic material, or recyclable material containers.~~

8.28.140 - Required provision of approved solid waste containers and minimum service and container capacity; container placement; residential occupants' access to services.

~~All solid waste~~ A. All mixed material, and organic material created or produced in the city shall be deposited in a container or containers approved by the Director, equipped with suitable handles and a tight-fitting cover, and watertight. Every person in possession, charge, or control of any single-family dwelling, multi-family dwelling or commercial premises shall provide a sufficient number of such containers of sufficient capacity to hold all solid waste which is mixed materials, recyclable materials, and organic materials which are created, produced, or accumulated on such premises between the time of successive collections by the collector. Such solid waste or removal under self-haul permit, to meet the minimum SFD and MFD service and container capacity requirements of this section, and to meet county and/or state requirements for organic materials capacity and/or recyclable materials capacity.

B. The minimum service and container capacity requirements are as follows:

1. Single-family dwellings: for each residential unit, mixed material container capacity of at least twenty (20) gallons.
2. Multi-family dwelling: mixed material container and collection frequency such

that the weekly capacity is equal to the number of dwelling units in the multi-family dwelling multiplied by twenty (20) gallons.

- C. Such containers shall be kept in a suitable location upon such premises, readily accessible to the collector, if backyard service is provided. Every person subscribing to curbside collection of solid waste shall place the container(s) at curbside or streetside on their collection day in a manner that does not block any driveway, sidewalk or street. Containers placed at curbside or streetside shall be timely returned to their normal storage area after the collector has emptied the container(s). By written permission of the Director, a location for such container or containers upon public property may be arranged.

~~Solid waste containers for joint or multiple use may be provided for multifamily dwellings, provided that each container is clearly marked so as to designate the dwelling which it serves. Each solid waste container for individual, joint, or multiple use shall have a capacity of not more than thirty-two (32) gallons if collected manually by the collector and shall be kept in a clean, neat, and sanitary condition at all times. The combined weight of each thirty-two (32) gallon container and its contents shall not exceed seventy-five (75) pounds.~~

- D. Owners of SFD and MFD premises shall ensure that the occupants of such premises have reasonable access to the services provided by the MM&O and RR collectors, including the collection of mixed materials, organic materials, recyclable materials, and bulky goods.

8.28.150 - Prohibition on disposalimproper placement of solid waste.

It is unlawful to dispose of place solid waste anywhere in the city except as provided for in this chapter.

8.28.155 - Prohibition on accumulation of solid waste on unoccupied property.

It is unlawful for an owner to allow solid waste to accumulate on a premises.

8.28.160 - Use of litter receptacles.

It is unlawful for any person to deposit any material from any building or yard in, on top of, or alongside the street litter receptacles placed in the sidewalk area; provided, that pedestrians and other persons using said streets shall be permitted to deposit in said receptacles miscellaneous small articles of refuse carried by them.

8.28.170 - MM&O Collector entitled to payment for services renderedright to terminate service for non-payment.

~~Pursuant to the provisions of this chapter, the collector shall be entitled to payment from owner for any services rendered. City is not responsible for any payment due collector by reason of either entering into a franchise agreement, setting rates, adjusting rates, or failing to adjust rates, except if, and to the extent it is explicitly stated in such franchise agreement. Should there be a failure by an owner to make payment for any services rendered by the collector, the means for effecting payment shall be in accordance with the procedure set forth in Sections 8.28.180 to 8.28.240, inclusive.~~

Pursuant to the provisions of this chapter, the MM&O collector shall be entitled to terminate service to a customer for non-payment for any services rendered, provided that it has first complied with all applicable provisions of this chapter and the contract. At least thirty (30) days prior to terminating the service to a premises for non-payment, the MM&O Collector shall notify the owner

in writing of its intention to do so if the account remains delinquent. The Finance Officer may specify the form and manner in which such notification shall be given.

8.28.180 - Complaint of nonpayment. Summary abatement of nuisance.

The Director may, as authorized by Government Code section 38773 (as it may be amended from time to time), summarily abate nuisance conditions created by the failure of an owner of an SFD or MFD premises to comply with Section 8.28.100 or Section 8.28.120 by subscribing to solid waste collection service for the property on which the nuisance conditions are maintained. The city may do so when such nuisance conditions are created as a result of contractor's termination of service for non-payment, due to failure of occupant to initiate service, or otherwise.

8.28.190 - Collection of costs—Special assessment.

In accordance with Government Code section 38773.5 (as it may be amended from time to time), the city may make the costs of subscribing to service on behalf of the owner pursuant to Section 8.28.180, including the administrative costs associated therewith, a special assessment against the property upon which the nuisance conditions are maintained. The Finance Officer shall give the owner notice of its intention to impose of the special assessment under Section 8.28.180. Such notice shall also be provided to the premises if it is different than the address identified pursuant to Section 8.28.220. A separate special assessment shall be imposed for each billing period for which the city subscribes to service on behalf of the owner, and the city may continue imposing special assessments for subsequent billing periods until the owner has complied with Section 8.28.100 or Section 8.28.120, as the case may be. The notice shall include the information required by Section 8.28.210 and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments. In all other respects, the Finance Officer may specify the form and manner in which such notice is given.

~~Upon the expiration of the period during which the collector has rendered service and has presented the owner with a bill for such service, if the bill has not been paid in full, the collector shall send to the owner a second request for payment. The form and content of the second request for payment sent by the collector shall be approved by the Finance Officer.~~

~~Upon the expiration of not less than ten days following the mailing of the second request for payment by the collector, if the bill remains unpaid, the collector may file with the Finance Officer a verified written complaint which shall contain the specific allegations setting forth the name or names of said owner(s), the address of the dwelling served, the period of such service, the amount due, the steps taken to secure payment, and such other information as the Finance Officer may reasonably require. Such verified written complaints shall be submitted by the collector to the Finance Officer not more than ninety (90) days following the end of the service period.~~

~~8.28.190—Payment for services rendered and the assessment of administrative charges.~~

~~Upon receipt of the complaint filed in accordance with Section 8.28.180, the Finance Officer shall pay the amount due the collector from a revolving fund provided herein under Section 8.28.260 and owner shall be liable to the city for service charges paid, plus an administrative charge as established by the city's master fee schedule.~~

8.28.200 - Administrative hearing. Collector to provide opportunity to protest on delinquent charges.

The MM&O collector shall, within fifteen (15) days of declaring the charges delinquent, provide customer(s) and owner(s) of premises an opportunity to appeal, at an administrative conference conducted by the MM&O Collector, the delinquent charges asserted by the MM&O Collector.

8.28.210 – Administrative hearing on proposed special assessment.

~~After making payment to the collector for services rendered, the Finance Officer will~~ The notice of the city's intention to impose a special assessment provided under section 8.28.190 shall establish a time and place for an administrative hearing to allow the customer(s) and/or owner(s) of premises against which delinquent charges are assessed an opportunity to protest the charges imposition of the special assessment. The Finance Officer shall cause notice of this hearing to be mailed to the premises and each person to whom such described property is assessed in the most recent property ownership records provided to the city by the County Assessor on the date that the Finance Officer causes notice to be mailed. Notice of this hearing may be combined with notice of the hearing before the City Council as provided herein under Section 8.28.220.

~~At the administrative hearing, the City Manager and the collector or their designated representative(s) Finance Officer will hear any protests regarding delinquent charges for services rendered. The City Manager and the collector or their designated representative(s) the proposed imposition of the special assessment. The Finance Officer and the MM&O collector shall investigate the protest as may be required and report their findings to the owner prior to the hearing before the City Council provided herein under Section 8.28.220. The City Manager or his or her designated representative may waive the service fee. The Finance Officer may require the MM&O collector to reinstate service and/or may waive the administrative costs in those cases where he or she has found that the delinquent charges have been that led to the termination of services were made improperly; or where he or she has found that the owner was improperly notified of the delinquent service fee, he or she may waive the administrative charges established under Section 8.28.190; or he or she may recommend to the City Council that the owner receive no waiver of payment of service fees and/or administrative charges. charges.~~

8.28.210-8.28.220 - Report of delinquent charges proposed special assessments transmitted to City Council.

~~Upon receipt of verified written complaints from the collector~~ Following the administrative hearing, the Finance Officer shall transmit to the City Council a report of delinquent charges the special assessments proposed to be imposed. Upon receipt by of the report, the City Council of the report, it shall fix a time, date and place for hearing the report and any protests or objections thereto.

8.28.220-8.28.230 - Notice of hearing on proposed special assessments.

The City Council shall cause written notice of the hearing to be mailed to the owner of the premises to which the service was rendered not less than ten (10) days prior to the date of hearing. The said written notice shall be mailed to each person to whom such premises is assessed in the most recent property ownership records provided to the city by the County Assessor on the date the City Council causes notice to be mailed.

~~8.28.230 - Recordation of lien for delinquent charges.~~

~~Upon confirmation of the report of delinquent charges by the City Council, a lien on the premises to which the service was rendered will be recorded with the Recorder of the county of Alameda.~~

8.28.240 - Payment of special assessment prior to placement on tax roll.

At any point prior to the placement of the special assessment on the tax roll, the owner may avoid the collection of the special assessment on the tax roll by paying the city the service charge for the period during which the city subscribed to service on behalf of the owner plus the city's administrative costs.

8.28.240-8.28.250 - Collection of delinquent charges by Imposition of special assessment.