

Mark P. Wald
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. 11820 C. M. S.ORDINANCE AUTHORIZING A FRANCHISE AGREEMENT
FOR SOLID WASTE AND YARD WASTE COLLECTION AND
DISPOSAL SERVICES WITH WASTE MANAGEMENT OF
ALAMEDA COUNTY, INC.; AND ESTABLISHING RATES
AND PROCEDURES TO ADJUST THE RATES

WHEREAS, on November 21, 1978 the City of Oakland, a municipal corporation, hereinafter referred to as ("City") and Oakland Scavenger Company entered into a twenty-five (25) year exclusive franchise agreement for the collection, removal and disposal of refuse in the City of Oakland; and

WHEREAS, on February 22, 1983 the City and Oakland Scavenger Company entered into a supplemental agreement for the emptying of street litter containers; and

WHEREAS, on February 1, 1993 the City and Oakland Scavenger Company entered into a five (5) year agreement for the collection, processing and marketing of residential recyclable materials; and

WHEREAS, on October 21, 1993 Oakland Scavenger Company changed its name to Waste Management of Alameda County, Inc., a California corporation, hereinafter referred to as ("Contractor") and continues to provide refuse and residential recycling service in the City of Oakland; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("AB 939") Division 30 of the California Public Resources Code, commencing with Section 40000, declares that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, AB 939 requires California cities to reduce waste disposal by 25% by 1995 and 50% by 2000; and

WHEREAS, the City intends to comply with the requirements of AB 939 for the diversion of waste from landfill disposal, and to effectuate the City's own waste reduction strategy; and

WHEREAS, the City wishes to maximize cost effective waste reduction, recycling and composting both in order to comply with AB 939 and to promote resource conservation; and

WHEREAS, Yard Waste represents a large potential contribution to waste diversion in the City if it is separated from Solid Waste and diverted from disposal; and

WHEREAS, the City wishes to provide for sanitary, efficient and cost-effective Solid Waste and Yard Waste collection and disposal services within its jurisdiction; and

WHEREAS, the public health, safety and welfare in the City require that the collection, transportation over City streets, and ultimate disposition of Solid Waste, Yard Waste and components thereof, be closely regulated and monitored by the City; and

WHEREAS, the most efficient and effective means of providing Yard Waste collection services in the City is through an exclusive franchise with the provider of Solid Waste collection services for the City; and

WHEREAS, the City Council of the City of Oakland has determined that it is necessary to enter into an exclusive franchise in order to provide Solid Waste and Yard Waste collection and disposal services while maintaining the necessary controls over such factors as charges and fees, frequency and means of collection, use of City streets for transport and performance of recycling and composting services; and

WHEREAS, the City has the right under its police power to make provisions for Solid Waste handling, collection and disposal in a manner that the governing body deems appropriate, including the award, without competitive bidding, of partially or wholly exclusive franchises; and

WHEREAS, the City has the authority, pursuant to City Charter Section 1000, to grant or issue franchises for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

WHEREAS, Public Resources Code sections 40059 and 49300 currently state that the local governing body has the authority to make provisions for solid waste handling, collection and disposal in a manner that the governing body deems appropriate, including the award, without competitive bidding, of partially or wholly exclusive franchises by resolution or ordinance; and

WHEREAS, Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct Yard Waste programs and to arrange with residents and other entities in the City for the collection, safe transport and sale of Yard Waste, and the collection, safe transport and safe disposal of Solid Waste, (some of which may inadvertently contain hazardous materials), the City Council determines and finds that the public interest, health, safety and welfare would be best served if Contractor were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the City and Contractor agree to terminate the Franchise Agreement dated November 21, 1978 and the Street Litter Container Supplemental Agreement dated February 22, 1983 and enter into this new Agreement in order to meet the AB 939 goals and provide expanded and more cost effective Solid Waste handling services; and

WHEREAS, the City and Contractor agree to automatically terminate the Residential Recycling Services Agreement, as amended, upon its integration with this Agreement and the parties agree to make a reasonable good faith effort to integrate the agreements by June 30, 1996; and

WHEREAS, the new integrated agreement will thereafter be known as the Franchise Agreement for Integrated Solid Waste Management Services; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant to Public Resources Code section 21080(b)(8), CEQA Guidelines section 15273, CEQA Guidelines section 15308, CEQA Guidelines section 15061(b)(3), or CEQA Guidelines section 15301; 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 July 18, 1995 City Manager report to the City Council, incorporated herein by reference as if fully set forth herein.

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

Section 1. The Council does hereby find and declare that the above recitals are true and correct and that the award of a Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services is for a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefits of the inhabitants of the City.

Section 2. The City Manager is authorized to negotiate and execute the Franchise Agreement on behalf of the City, subject to the review and approval of the City Attorney.

Section 3. The City Manager is authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of the Franchise Agreement, except rate adjustments which shall be in accordance with the Oakland Municipal Code.

Section 4. In consideration of the special franchise right granted by the City to Contractor to transact business, provide services, use the public street and/or other public places, and to operate a public utility for Solid Waste and Yard Waste collection services, Contractor shall remit a monthly franchise fee payment to the City. From the effective date of the Franchise Agreement through December 31, 1995, Contractor shall pay the City a franchise fee of six and one-half percent (6.5%) of gross revenues less City fees. For the period of January 1, 1996 through June 30, 1999, Contractor shall pay to the City a monthly franchise fee of \$305,000 (\$3,660,000 per annum). Commencing July 1, 1999, and thereafter throughout the remainder of the term of the Franchise Agreement, the monthly franchise fee of \$305,000 required to be remitted by Contractor shall be adjusted by the annual Consumer Price Index adjustment granted Contractor pursuant to the Franchise Agreement.

Section 5. From the effective date of the Franchise Agreement through December 31, 1995, Contractor shall pay City fees based upon the methodology for submitting City fees currently in existence between the City and Contractor. For the period of January 1, 1996 through June 30, 1999, Contractor shall remit to the City a monthly payment of \$1,041,000 (\$12,492,000 per annum) and the City shall use said funds for certain programs (We Mean Clean and Clean Oakland - \$9,222,000; Household Hazardous Waste - \$120,000; Recycling - \$3,150,000). Historically the fees collected for the identified programs have not, and do not, completely cover the entire cost of providing the programs. Future fees collected will not completely cover the cost of existing and/or future programs. Commencing July 1, 1999, and thereafter throughout the remainder of the term of the Franchise Agreement, the monthly City fees of \$1,041,000 required to be remitted by Contractor shall be adjusted by the annual Consumer Price Index adjustment granted Contractor pursuant to the Franchise Agreement.

Section 6. The City Manager is authorized to make a reasonable good faith effort to integrate the Residential Recycling Services Agreement, as amended, into the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Service by June 30, 1996. The City Manager is authorized to execute the integrated agreement, subject to the review and approval of the City Attorney and said agreement shall thereafter be known as the Franchise Agreement for Integrated Solid Waste Management Services and shall thereafter be filed in the Office of the City Clerk. Notwithstanding the City's and Contractor's good faith efforts, if an integrated Agreement cannot be executed, this Agreement and the amended Residential Recycling Services Agreement shall remain in full force and effect.

Section 7. The City Council has independently reviewed and considered this environmental determination and finds and determines that the action complies with CEQA and directs the City's Environmental Review Officer to file a Notice of Exemption.

Introduced: 7/18/95
IN COUNCIL, OAKLAND, CALIFORNIA, JUL 25 1995, 19 _____

PASSED BY THE FOLLOWING VOTE:

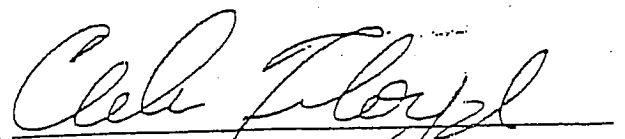
AYES- ~~BAYTON~~, CHANG, DE LA FUENTE, JORDAN, MILEY, RUSSO, SPEES, ~~WOODS JONES~~, and PRESIDENT HARRIS - 7

NES- Bayton - 1

ABSENT- Woods Jones - 1

ABSTENTION- NONE

ATTEST:


CEDA FLOYD

