



# City of Chula Vista

## Staff Report

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**File#:** 14-0453, **Item#:** 2.

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- A. ORDINANCE NO. 3319 OF THE CITY OF CHULA VISTA GRANTING A WASTE MANAGEMENT FRANCHISE RENEWAL TO ALLIED WASTE SYSTEMS, INC. (DBA REPUBLIC SERVICES OF CHULA VISTA) ON THE TERMS PRESENTED UNTIL JUNE 30, 2024 WITH TWO OPTIONS TO EXTEND UNTIL JUNE 30, 2031 AND JUNE 30, 2039, RESPECTIVELY, SUBJECT TO THE CITY'S DETERMINATION OF SATISFACTORY PERFORMANCE AND AUTHORIZING THE MAYOR TO EXECUTE SAME (SECOND READING AND ADOPTION) (This ordinance was introduced July 22, 2014)
- B. RESOLUTION NO. 2014-159 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE AMENDED AND RESTATED OTAY LANDFILL EXPANSION AGREEMENT BETWEEN THE CITY AND OTAY LANDFILL, INC., AND AFFILIATES THEREOF AND AUTHORIZING THE MAYOR TO EXECUTE SAME

### RECOMMENDED ACTION

Council adopt the ordinance and resolution.

### SUMMARY

City staff has negotiated with Allied Waste Services, Inc., (dba Republic Services of Chula Vista "Republic") to develop the terms and conditions for the proposed Waste Management Franchise Renewal ("Franchise Renewal"). Before City Council could consider action on the Franchise Renewal the City Charter required that a Resolution of Intention be adopted and a Public Hearing be scheduled. Council adopted a Resolution of Intent on July 8, 2014, and set the Public Hearing for the first reading of the Ordinance for July 22, 2014.

Concurrently, with the Franchise Renewal, an Amended and Restated Otay Landfill Expansion Agreement has been negotiated with Republic and its affiliate, Otay Landfill, Inc. This agreement provides additional benefits to the citizens of Chula Vista.

### ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because the proposal consists of a continuing administrative action involving the renewal of a current waste management franchise agreement that will not result in direct or indirect physical changes to the environment. Therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA review.

### BOARD/COMMISSION RECOMMENDATION

Not Applicable

## **DISCUSSION**

The current waste management franchise agreement with Republic was negotiated and approved in 1999. The agreement provided a variety and quantity of service options not readily available in other jurisdictions. A mutually beneficial Otay Landfill Expansion Agreement was approved concurrently. The proposed Franchise Renewal does not take away any of the services that the citizens of Chula Vista currently enjoy. This proposal from Republic is important for several reasons:

The current franchise agreement expires on June 30, 2015, with two, eight-year options for extension until 2031.

Newly developing regulations regarding the recycling of organic discards, such as yard waste and food waste, and reducing the associated greenhouse gas emissions, will require the implementation of new technologies and methods, other than landfill disposal.

Capital funding necessary to meet the demand of these developing regulations, as well as the continued growth of the city, required a longer term commitment to capitalize the expenditures.

City staff has negotiated with Republic to update the language of the 1999 solid waste disposal and landfill agreements to reflect the passage of time (completed milestones, operational changes, etc.) and provide enhancements to components of the agreements that will improve customer satisfaction, keep the City streets cleaner and assist with State mandated solid waste and greenhouse gas emissions reduction goals.

City Council adopted a Resolution of Intent to renew the Waste Management Agreement with Republic Services on July 8, 2014 which also set the public hearing for first reading of the resolution for July 22, 2014.

### Scope of Proposal

#### 1. Term:

The proposed Franchise Renewal takes the last year of the current agreement along with the two, eight year contract extensions and restructures them so that Republic may commit the capital necessary to meet the needs of our growing city and be in compliance with State solid waste and greenhouse gas emission reduction requirements.

The initial term shall commence September 2014 and end June 30, 2024, unless extended or earlier terminated per the terms of the agreement. Republic will have the option to extend the term for another seven (7) years on the same terms and conditions provided the City Manager reasonably determines that Republic has satisfactorily performed and is in full compliance with the agreement and applicable law. City also can extend the term in its discretion if for any reason Republic elects not to.

The City is provided one (1) additional eight (8) year extension option at its sole discretion subject to earlier termination by Republic in the event the Otay Landfill closes.

**2. Franchise Fee and Bonus Payments:**

In consideration of the City's grant of this Franchise Renewal, Republic will pay to the City 20% of Republic's gross receipts as a Franchise Fee. (The previous Franchise Fee was 10%). City reserves the option to increase to 25% commencing July 1, 2015 if either party extends the Franchise to 2031. Per industry standard, Republic has the right to pass through this franchise fee to ratepayers. Republic must also pay the City an annual "bonus fee". This provision is carried over from the 1999 agreement. The current fee is \$962,823.86. The fee increases by 3% per year. Republic is prohibited from passing through the bonus fee to ratepayers.

**3. Free Disposal for City Business:**

The City will not be charged for disposal of materials generated by City crews, contractors or sub-contractors performing work for the City and taken to the Otay Landfill up to a maximum of 5% of the total materials collected citywide (the total tonnage of solid waste, recyclable materials and green waste). Any amount over the 5% will be billed to the City. This is an increase in free tonnage that was previously based upon 5% of the solid waste tonnage only. Within this 5% cap on tonnage, the Franchise Renewal also allows City-designated educational, medical or sports oriented non-profits building facilities within the City to take advantage of this free disposal benefit.

**4. New Recycling Programs:**

Pilot programs and innovative services which may entail new collection methods or processes may be directed by the City to meet applicable laws.

**5. Bulky Waste Items:**

Residents may call in 24 hours in advance of their service day to get next day service on free bulky item collection. This was previously a 48 hour requirement.

**6. Customer Service:**

Telephones will be attended by live customer service representatives from 8:00 am to 6:00 pm Monday through Friday, and 8:00 am to noon on Saturday. This increased the available time from 5:30 pm to 6:00 pm to allow time for residents to return home from work and call in any service issues the same day.

**7. Recycling Education:**

Republic will pay \$110,000 annually for the Recycling Education Program and will escalate this amount 1% per year. This is a \$41,000 increase over the existing contract.

**8. Rate Adjustment Formula:**

The rates for Large Quantity Generators and Small Quantity Generators, will take effect beginning July 1, 2015, and September 1, 2015, respectively and each annual anniversary thereafter.

The Maximum Rates for General Services shall increase in an amount not to exceed

the product of the previous year's Rate multiplied by 100% (up from 66.66% under the 1999 agreement) of the San Diego Area Consumer Price Index for All Urban Consumers (all items) for the previous calendar year increase. (Rate x CPI = Adjusted Rate.)

Significant ratepayer protections from the 1999 agreement remain unchanged. For example, at no time will the Small Quantity Generator Rate be allowed to exceed 90% of the average for San Diego County for the same level of service, after governmental pass through fees have been removed. Moreover, if Republic offers a lower rate within the County, under a franchise for similar services, it is required to offer that lower rate in Chula Vista.

9. Otay Landfill Agreement:

In tandem with the Franchise Renewal, an Amended and Restated Otay Landfill Expansion Agreement has been negotiated with Republic and its affiliate, Otay Landfill, Inc. This agreement provides additional benefits to the citizens of Chula Vista. A default by Republic under the landfill agreement will also constitute a default under the Franchise Renewal.

- Free Compost Material for Chula Vista Residents -  
Republic will provide three, free, compost events per calendar year. Each event will be provided 150 cubic yards of compost to give away to City residents and non-landscaping businesses on a first come, first serve basis, while supplies last.
- Landfill Capacity for Chula Vista Residents -  
As the landfill begins to reach capacity, Republic will hold back space within the landfill to guarantee Chula Vistans will have landfill space until, at a minimum, year 2028 before having to long-haul to the Sycamore Canyon Landfill in San Diego.
- Future Resource Recovery Park -  
Upon closure of the Otay Landfill, a minimum of 20 acres up to 30 acres will be developed for a Resource Recovery Park for solid waste handling, transfer and/or processing to serve the City and other jurisdictions. A Resource Recovery Park may co-locate reuse, recycling composting processing and related manufacturing and retail businesses in a central location with the goal to work towards zero waste materials to landfill disposal.
- Landscaping -  
Upon closure, the landfill will be contoured to resemble the surrounding mountains. The slopes will be re-vegetated with the goal of creating a habitat for native species - plants and wildlife. It will not look like an engineered mountain and the final height will be 662.5 feet.

**Public Protest Process**

The City is required under Article XIID, Section 6(a) of the California Constitution to provide public notice and conduct a fee protest proceeding with respect to the adoption or increase of fees or charges for sewer, water, wastewater, or refuse services.

Staff will begin this process immediately upon Council approving the first reading of the Ordinance.

The process and timeline for this proceeding is as follows:

- After approval of the first reading of the Ordinance staff will send out a Public Notice to all property owners and customers of record served by the City contract. This will start a 45 day period for receiving written protests.
- This Notice will provide information on the proposed fees or charges and the formula for adjustments in subsequent years.
- Directions for submitting a protest by the owner or customer of record will be fully detailed within the Notice.
- The protest must be in writing and include a statement that it is a protest against the proposed charges; the name of the owner or customer who is submitting the protest; identified by street address or account number of the parcel and include an original signature as well as clearly printed named of the person submitting the protests.
- In the case of multiple owners or if the owner is not the customer of record, only one protest will be counted per parcel as provided in Government Code Section 53755(b).
- At the conclusion of the public hearing the City Clerk will tabulate all the protests received and report the results to the City Council.
- All protest submittals once they have been opened and tabulated become a disclosable public record.
- A majority protest exists if written protests total a majority of the parcels subject to the proposed charges - 50% plus one.

**DECISION-MAKER CONFLICT**

Staff has determined that the action contemplated by this item is ministerial, secretarial, manual, or clerical in nature and, as such, does not require the City council members to make or participate in making a governmental decision, pursuant to California Code of Regulations Title 2, section 18702.4 (a). Consequently, this item does not present a conflict under the Political Reform Act (Cal. Gov't Code § 87100, et seq.). Staff is not independently aware, and has not been informed by any council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

**LINK TO STRATEGIC GOALS**

The Franchise Renewal for solid waste and recycling services support the Healthy Community, Operational Excellence and Economic Vitality Strategic Goals by promoting recycling, guaranteeing good service for competitive prices, and providing sustainable services over the next two decades.

### **CURRENT YEAR FISCAL IMPACT**

Approval of the resolution notices the City's intent to grant a waste management franchise renewal to Republic Services, including an immediate 10% increase to the Franchise Fee, increasing the rate from 10% to 20% and reserving the right to increase the Franchise Fee by an additional 5%, to a total of 25%, with written notice to Republic. In addition to increasing the Franchise Fee rate, the renewal agreement preserves the annual bonus payment, increases the annual funding for the Recycling Education program, and establishes a 1% annual escalator to the Recycling Education program funding.

#### Impact to City

Under the current agreement, Republic pays 10% of gross receipts to the City in Franchise Fees. This generates approximately \$2.1 million in discretionary General Fund revenues annually. If granted, the renewal agreement will increase the Franchise Fee rate to 20%, doubling the Franchise Fees paid to the City. With an estimated effective date of November 1, 2014, this equates to an estimated current year fiscal impact of approximately \$1.2 million.

In addition to the standard Franchise Fee, Republic pays the City an annual bonus, totaling approximately \$962,000 in fiscal year 2014-15, increasing by 3% annually. The renewal agreement preserves this bonus, including the annual 3% escalator, through the term of the agreement (2023). Approval of the renewal agreement does not increase the annual bonus, but does preserve this source of discretionary funds.

Lastly, the renewal agreement increases the annual Recycling Education program funding from the current \$69,000 to \$110,000, and establishes an annual 1% escalator in future years. This represents an increase in program funding in the current fiscal year of \$41,000 (payment will not be prorated). These funds are not discretionary, and must be spent to partially fund a recycling public information and enforcement program.

#### Impact to Rate Payer

Under the current agreement, Republic pays 10% of gross receipts to the City in Franchise Fees. Of this amount, Republic passes 8% through to the customer, and 2% is paid by Republic. If granted, the renewal agreement will increase the Franchise Fee rate to 20%, and allow Republic to pass the entire 20% through to the customer. Rate payers will see an increase of 12% on their solid waste bills as a result of the renewal agreement. For Small Quantity Generators (cart customers) this will equate to approximately \$2.00 per month. For Large Quantity Generators (bin customers) this will equate to approximately \$4.25 per month for a three cubic yard bin, serviced one time per week.

### **ONGOING FISCAL IMPACT**

Under the current agreement, Republic pays 10% of gross receipts to the City in Franchise Fees. This generates approximately \$2.1 million in discretionary General Fund revenues annually. If granted, the renewal agreement will increase the Franchise Fee rate to 20%, doubling the Franchise Fees paid to the City. This will generate additional discretionary revenues to the City of

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approximately \$2.1 million annually through the term of the agreement (2023). Implementation of the additional 5% increase authorized in the agreement would generate approximately \$1 million in additional discretionary revenues, for a total annual increase of \$3.1 million.

The City will continue to receive the annual bonus payment of \$991,708.58 in 2015-16, including the existing 3% annual escalator, and will receive additional Recycling Education program funding of \$41,000 annually, increasing 1% each year.

#### **ATTACHMENTS**

Solid Waste Franchise Renewal Agreement

Amended and Restated Otay Landfill Expansion Agreement

Rate Sheets Draft - effective July 1 and September 1, 2015

*Staff Contact: Lynn France, Environmental Services, Ext. 5790*