



## Legislation Text

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**File #:** 20-0096, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Bruce Moe, City Manager

**FROM:**

Stephanie Katsouleas, Public Works Director

Anna Luke-Jones, Public Works Senior Management Analyst

**SUBJECT:**

Consider Adopting: 1) a Resolution Setting a Date and Time for a Public Hearing to Consider Increasing Commercial and Residential Solid Waste Hauling Fees and City Recovery Costs for 2020 - 2024; and 2) a Resolution Adopting Procedures in Connection with Proposed Solid Waste Hauling Fee Increases (Public Works Director Katsouleas).

**ADOPT RESOLUTION NOS. 20-0028 AND 20-0029**

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**RECOMMENDATION:**

Staff recommends that City Council adopt: 1) Resolution No. 20-0028 setting May 5, 2020 for a public hearing under the Proposition 218 protest procedure to consider adopting new commercial and residential solid waste hauling fees and City Recovery Costs, inclusive of annual Consumer Price Index (CPI) escalations over the next five years; and 2) Resolution No. 20-0029 adopting procedures in connection with the proposed solid waste hauling fee increases.

**FISCAL IMPLICATIONS:**

Commercial and residential solid waste hauling fees (rates) are fully paid by the customers receiving refuse service. The City also receives a City Recovery Cost (CRC) for the administration and oversight of the program and solid waste contractor. Under the new agreement with Waste Management (WM), residential solid waste hauling rates will increase by approximately 25% over current rates. Additionally, most commercial customer rates will be substantially higher based on the volume and frequency of waste collection services they receive. The commercial rate increase is partly due to the fact that commercial customers will begin paying for recycling services that were previously provided at no additional charge. The onset of paying for recycling collection services is attributable to the rapidly changing recycling market in China and corresponding increased cost of recycling.

In order to pass along the proposed FY 2020/21 rate increases to commercial and residential customers, including the proposed annual CPI increase for the following four years, the City is required to undertake a Proposition 218 protest ballot process. This includes setting a date for a public hearing to hear protests against the proposed rates and the CRC fee, and, assuming no majority protest, approving the new rates and CRC fee for implementation, effective July 1, 2020. The

new waste hauling rate for FY20-21 and the rate adjustment calculation method for the subsequent four years are provided in the attached Proposition 218 ballot materials along with the CRC rate for the first year. If the City receives a majority protest, then it will not be able to impose the new rates on commercial and residential customers. Under such a scenario, the City would be required to subsidize the difference between the upcoming, new contractor rate and the previously-approved customer rate. The estimated difference between the existing and proposed rates for Year 1 is approximately \$2.7 million, and would be adjusted annually based on Consumer Price Index rate changes. Note, however, that there are no time restrictions for when the City could initiate a new Proposition 218 process for the same solid waste hauling fees, so re-balloting could occur at any time should this procedure fail.

When the new contract rates take effect on July 1, 2020, Waste Management will begin billing Manhattan Beach's businesses and residents directly for refuse service. The company will also collect the CRC on the City's behalf and remit it directly to the City on a monthly basis.

#### **BACKGROUND:**

On February 5, 2019, following an 18-month hauler selection process, City Council awarded Waste Management a new seven-year, commercial and residential solid waste hauling contract, with three optional one-year extensions. This term structure (7+1+1+1) could potentially allow the agreement to be in effect for ten years.

Due to the significant fee increases in the new contract, City Council also decided to defer the start date to July 1, 2020 and, in the meantime, continue to offer the lower waste hauling rates and terms approved in 24-month extension to the previous WM contract. As mentioned under Financial Implications, when new, higher service fees are proposed, the City is required to initiate a Proposition 218 majority protest process in order to pass on those rates increases to its businesses and residents. Proposition 218 allows municipalities to consider rate adjustments for up to five years. At the end of this five-year term, in order to raise collection fees Manhattan Beach will be required to initiate another Proposition 218 process for the remaining two-year term of the contract, as well as consider the rates for the three-one-year optional renewal periods.

#### **DISCUSSION:**

##### **Proposition 218 Background and Process**

In November 1996, California voters passed Proposition 218, the "Right to Vote on Taxes Act," and added Articles XIIC and XIID to the California Constitution. Article XIID imposes substantive and procedural requirements to impose or increase property-related fees, such as the proposed refuse collection service charges. This constitutional amendment protects taxpayers by limiting the methods in which local governments can create or increase taxes, fees, and charges without taxpayer consent. Proposition 218 requires voter approval prior to any imposition or increase of general taxes, assessments, and certain user fees, including charges paid by rate payers for refuse services.

In order to implement new customer rates, City Council must initiate the Proposition 218 voter protest process and set a public hearing time and date to approve or reject the new rates. This process requires that the City mail a notice to each prospective rate payer identifying the proposed rate increases and conduct a public hearing to consider the rate increases at least forty-five days after the notices are mailed. At the public hearing, the City Council must consider all protests or objections to the proposed refuse collection service charge. At the conclusion of the public hearing, the City

Council must tabulate the written protests against the proposed refuse collection service charges and determine whether a majority protest exists. Unless protests are received from a majority of rate payers (50% + 1), the rates may be adopted by a majority vote of City Council at the public hearing. If City Council sets the public hearing and authorizes staff to begin the Proposition 218 notification process, notices will be mailed by March 11, 2020, and a Public Hearing will be on May 5, 2020, during the regularly scheduled City Council meeting.

In addition to Resolution No. 20-0028 setting the time and date for the public hearing, City Council is also being asked to consider Resolution 20-0029 establishing "Procedures for the Conduct of a Public Hearing Relating to Proposed Increase to Solid Waste Hauling Fees" (the "Procedures"). The Procedures govern the conduct of the public hearing and the submission and tabulation of written protests in connection with the City Council's consideration of the proposed increase to commercial and residential solid waste hauling fees in compliance with the requirements of Proposition 218.

### **City Recovery Cost**

A small portion of each customer's solid waste hauling rate, as shown in the attachment, includes the City Recovery Cost for the administration and oversight of the refuse program and contractor. The FY20-21 CRC rate has been calculated at 1.30%. The CRC is calculated annually by the City based on actual cost recovery for administration and oversight of the waste hauling program and contractor. Beginning in year two, annual adjustments, if any, will not exceed 5%.

Currently, the Refuse Fund serves as an intermediary to transfer refuse collections to the contractor. Since Waste Management will begin the refuse billing on July 1, 2020, Finance plans to close the Refuse Fund and transfer all the assets, liabilities, and residual activity to the General Fund.

### **Waste Management Rates and Annual Increases**

The solid waste hauling rates shown in the attachment represent the base rates for FY20-21, and the rate adjustment calculation method for four additional rate increases to be applied annually on July 1 of each subsequent year (2021 - 2024). Waste Management's annual rate increases will be limited to the Consumer Price Index (CPI) increase for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City average, as published by the United States Department of Labor, Bureau of Labor Statistics, between the calendar year ended the December prior to the Rate Year anniversary date, and the calendar year ended the prior December. The attached Proposition 218 document provides the total customer rates beginning July 1, 2020 (Hauler Cost + City Recovery Cost = Customer Rate).

### **Timeline**

Upon setting a date for the public hearing, the Proposition 218 Notice of Public Hearing and Proposed Rates will be mailed to each affected property owner in the City. The public hearing must be held upon or after the expiration of a 45-day period from the mailing of these ballot materials. At the public hearing, scheduled for May 5, 2020, City Council will hear public testimony either in support for or against the proposed rate increases, and the mailed protest ballots will be tabulated during the meeting to determine the percentage of property owners in favor of or opposed to the proposed rate increases.

The following timeline represents the current schedule for adopting new solid waste hauling fees under the new franchise agreement, effective July 1, 2020:

- March 3, 2020** City Council adopts a resolution to begin Proposition 218 protest ballot process for voters to either approve or reject the five-year schedule of solid waste hauling fee increases.
- March 11, 2020** Proposition 218 deadline for mailing notices to property owners.
- May 5, 2020** City Council conducts a public hearing to count all Proposition 218 protest votes received and considers whether to adopt a resolution approving a five-year schedule of rate increases for refuse services, beginning July 1, 2020.
- July 1, 2020** Effective date of new rates and franchise agreement.

The Public Works Department will also host a public meeting during the 45-day mailed ballot period to discuss individual assessments with property owners. This meeting is scheduled for April 1, 2020, at 6:00 PM in City Council Chambers. During the public meeting, staff will provide businesses and residents an opportunity to further review the proposed rate increases and any ask questions they may have.

Therefore, staff recommends that City Council adopt: 1) Resolution No. 20-0028 setting May 5, 2020 for a public hearing under the Proposition 218 protest procedure to consider adopting new commercial and residential solid waste hauling fees and City Recovery Costs, inclusive of annual Consumer Price Index (CPI) escalations over the next five years; and 2) Resolution No. 20-0029 adopting procedures in connection with the proposed solid waste hauling fee increases.

#### **PUBLIC OUTREACH:**

An extensive amount of public outreach was conducted regarding selection of services and procurement of a new waste hauling contract between September 28 and November 3, 2017. The information collected was used to develop a list of the solid waste hauling services to be included in a new franchise agreement. Outreach avenues included:

- On-line and printed surveys at City facilities;
- Distribution at the 2017 Hometown Fair;
- Advertising in the Beach Reporter (print and digital);
- Posting on the City's Facebook, Twitter, and NextDoor accounts;
- Dissemination through the City's e-notification system;
- Presentations at the Downtown Business Association and the North End Business Improvement District meetings, and through email blasts to members of both organizations and the Chamber of Commerce.

Solid waste hauling services and fees were also discussed at multiple City Council meetings, including:

- July 18, 2017
- November 7, 2017
- February 6, 2018
- April 17, 2018

- May 15, 2018
- January 15, 2019
- February 5, 2019

In addition to the required Proposition 218 notice to all property owners, Beach Reporter ads will be printed on March 19, March 26, April 2, April 9, and April 16, 2020, reminding residents to read their notices and submit their Proposition 218 protest ballots.

**ENVIRONMENTAL REVIEW:**

The City 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; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

**LEGAL REVIEW:**

The City Attorney previously approved the new solid waste hauling franchise agreement as to form.

**ATTACHMENTS:**

1. Resolution No. 20-0028
2. Resolution No. 20-0029