



## Legislation Text

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**File #:** 25-0072, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Talyn Mirzakhanian, Acting City Manager

**FROM:**

Erick Lee, Public Works Director  
Jeff Page, Utilities Manager  
Anna Luke-Jones, Solid Waste Administrator

**SUBJECT:**

Consideration of a Request from Waste Management to Adjust Solid Waste Diversion Requirements in the City's Franchise Agreement for Integrated Solid Waste Management Services (No Budget Impact) (Public Works Director Lee).

**(Estimated Time: 30 Mins.)**

**REVIEW AND PROVIDE DIRECTION**

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**RECOMMENDATION:**

Staff recommends that the City Council discuss Waste Management's request to adjust solid waste diversion requirements and provide direction.

**FISCAL IMPLICATIONS:**

There are no fiscal implications at this time. If the City Council considers reducing the solid waste diversion requirements in the City's franchise agreement, Waste Management (WM) will be authorized to landfill additional material, which is less expensive for WM to process than recycling. While WM is not proposing a rate reduction to account for this decrease in diversion requirements, the City Council may want to consider the exploration of a rate reduction to account for the reduction in services provided under the franchise agreement.

**BACKGROUND:**

The City has franchised its residential and commercial solid waste services with a private hauler since the early 1980s. The last Request for Proposal (RFP) process for solid waste hauler selection was awarded to WM in 2019, with an effective date of July 1, 2020. The franchise agreement is for seven fiscal years (FY) plus three one-year optional extension years, for a potential of 10 total years (July 1, 2020 through June 30, 2027 + optional FY28 + optional FY29 + optional FY30).

Diversion is the process of diverting material from the landfill, otherwise known as recycling. As part of WMs proposal, a diversion rate of 46% was proposed. This meant that of all the material that WM collected, it proposed to divert 46% of it from the landfill. At the City Council meeting where the

franchise agreement was awarded, the City Council requested that WM consider the following items as part of the agreement:

- Increase the diversion requirement by 4 percentage points from 46% to 50%;
- Double the number of bulky items residents could place for pick up each year from nine items to 18 items;
- Double the number of paper shredding events from two events to four events;
- Take over the billing at no additional cost.

WM agreed to all four adjustments requested by the Council, and it was awarded the franchise agreement with the City.

Liquidated Damages for Diversion

WM has struggled to achieve the agreed-upon diversion rates since the inception of this agreement. Under Section 10.7.b of the agreement, the Liquidated Damages for “Diversion Efforts” non-compliance are assessed in the following manner: “For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement each year per Section 3.8.1, beginning with the first full calendar year 2021, and including any partial calendar year at the end of the term: \$25.00 per ton.”

The City assessed WM with liquidated damages for missed diversion rates for calendar years 2021 and 2022. In 2021, WM achieved 43% of the 50% requirement and was assessed \$53,980.75. In 2022, WM achieved 45% of the 50% requirement and was assessed \$36,177.

The calendar year 2023 diversion rate also fell below the requirement. The City has already noticed WM of its intent to assess liquidated damages for that year. However, WM has requested a meeting with the City Manager about this proposed assessment, which is allowable under Section 10.10.a of the franchise agreement. That meeting was scheduled to occur on February 3, 2025. Following the meeting, the City Manager will issue a final determination about the assessment.

CATEGORY	2021	2022	2023 (In Progress)
Required Diversion:	50%	50%	50%
Actual Diversion:	43%	45%	32%
Percentage Difference:	7%	5%	18%
Total Tons Collected:	31,545.25	30,744.24	31,927.26
Required Tons Diverted:	15,772.63	15,372.12	15,963.63
Actual Diverted Tons:	13,613.40	13,925.04	10,161.06
<b>Delinquent Tons:</b>	<b>2,159.23</b>	<b>1,447.08</b>	<b>5,802.57</b>
Liquidated Damage/Ton:	\$25.00 p/ton	\$25.00 p/ton	\$25.00 p/ton
<b>Liquidated Damage Fee:</b>	<b>\$53,980.75</b>	<b>\$36,177.00</b>	<b>\$145,064.25</b>

Separately, on July 15, 2024, WM sent a request for the City Council to consider an extraordinary

rate increase and solutions to its ongoing diversion challenges. At that time, WM's request for an extraordinary rate increase had previously been denied by the City Manager, and staff was working with WM to schedule a meet and confer sessions-in accordance with the agreement-to address its diversion request.

Staff and WM held five meet and confer meetings on the following dates:

- August 27, 2024
- September 17, 2024
- October 10, 2024
- October 29, 2024
- November 19, 2024

At the November 19, 2024 meeting, the City Council approved Amendment No. 2 to the WM franchise agreement, approving a one-time special rate adjustment to be included in the Proposition 218 process rate sheets in spring 2025.

**DISCUSSION:**

Waste Management requested to meet and confer on the topic of diversion requirements, allowable per Section 3.8.1 of the franchise agreement:

Hauler Diversion Requirements

The minimum amount of hauler-collected tonnage that shall be diverted by Company through Recycling, Organics Collection, Mixed Waste Processing, and Transformation of the Solid Waste Collected by Company under this Agreement during each year of this Agreement is 50%.

Diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to Cal Recycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

Upon the request of either party, but not more than once every two years, the parties agree to meet and confer, and negotiate in good faith, regarding adjustments to the hauler diversion requirement, including trends in source reduction, the availability of permitted facilities that are capable of processing material to achieve the required levels of diversion, the availability of commercially viable markets for Recyclable Materials or Organic Waste, transportation constraints, embargoes, and the impact of third party recycling and scavenging.

Upon receiving WM's request to meet and confer on this issue, the City engaged its solid waste consultant, HF&H Consultants (HF&H), to assist with this process. HF&H has a strong expertise in California solid waste regulations and provided support to the City during the last Request for Proposals (RFP) process that resulted in the City entering into the current franchise agreement with WM. This firm participated and provided advice to staff throughout the meet and confer process.

During the five meet and confer meetings, WM explained its challenges in achieving the agreed-upon diversion rate and presented its preferred diversion rate and standards based on what it believes is now feasible. WM communicated that one of the main challenges related to diversion compliance includes the discontinuation of using transformation for diversion credit in annual reporting to the State of CA (Cal Recycle). Transformation, otherwise known as “Waste to Energy,” was a style of processing in California that Cal Recycle authorized cities to utilize for up to 10% of their reported diversion. AB1857 was signed on September 16, 2022, and became effective January 1, 2023. This law eliminated the use of transformation “credit” toward diversion in state reporting. The local transformation facility has since closed (SERRF in Long Beach), and the location is being considered for an organics processing facility. Even though WM’s RFP proposal only included 1% of transformation annually to help meet its diversion goal, WM utilized the full allowable 10% for transformation processing in 2021 and 2022.

Another challenge WM expressed is the restriction of using third-party recycling and construction and demolition recycling in its monthly tonnage reports. WM asked that the City allow it to utilize third-party recycling and all construction and demolition (C & D) project tonnage from all haulers citywide to its monthly diversion achievements. In California, it is legal for businesses to give its recycling to others, as long as the business is not paying another for collecting or removing the material. For example, if a business would like to redeem its recycling at a recycling processing center, donate it to a neighbor, or donate its cans and bottles to a Girl Scout troop, that is completely legal. The violation of the franchise agreement occurs if the person, group, or business who receives the material charges the generator of the waste for the removal or obtains the material from a WM container. Once the material is in a WM container, it is owned by the generator (business) and WM. Third-party recycling was allowed on the tonnage report during the 2001 - 2011 franchise agreement, but there were issues with verifying tonnage from these sources. As a result, Cal Recycle advised the City to remove it from future franchise agreements. Thus, the current franchise agreement does not allow for third-party recycling.

Additionally, WM expressed interest in including construction and demolition recycling in its monthly tonnage reports. Construction and demolition services for permitted projects are currently “open market” and not part of the exclusive franchise with WM. Any hauler with a business license can provide C & D services or containers in Manhattan Beach, and contractors may self-haul their project material to facilities. The material is typically very heavy and would easily help WM meet the 50% requirement. Currently, third-party recycling and C & D recycling are not authorized in the franchise agreement to be counted toward diversion goals.

Following extensive conversations with WM, the hauler ultimately advised that it likely could not exceed an annual 37% diversion rate going forward without making significant changes to the franchise agreement. Based on all of the available information presented by WM and the construct of the current franchise agreement, HF&H opined that it would be challenging for WM to exceed a 37% diversion rate. Thus, WM is requesting that the City consider reducing this rate downward from the 50% requirement. Furthermore, WM advised that it was not interested in decreasing the rates it charges the community to provide its services to account for its reduction in the required diversion percentage. At that point, staff advised WM that its request will be agendized at a future meeting for the City Council to consider its request. Representatives from WM are planning to attend this meeting to answer any questions that the Council may have.

On a related note regarding solid waste in the South Bay region, the City of Redondo Beach has

received a request from its hauler (Athens Services) to reduce its contracted diversion requirement from 75% to 50%. As of the date of this report, the City of Redondo Beach has not approved this request.

**PUBLIC OUTREACH:**

After analysis, staff determined that public outreach was not required for this issue.

**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 has reviewed this report and determined that no additional legal analysis is necessary.

**ATTACHMENT/ATTACHMENTS:**

1. Letter from Waste Management (July 15, 2024)
2. Agreement - Waste Management Franchise (Web-Link Provided)
3. PowerPoint Presentation