

Summary of Policy and Legislative Issues Regarding Executed Contracts

First, in December 2019, Councilmember Chahal opposed the selection of the mixed waste processing and voted against it. In order to reexamine past Council action, a Councilmember that voted in support of the mixed waste processing would have needed to make the request within the subsequent two Council meetings for it to be noticed on a Council agenda. Councilmember Chahal was not eligible to make a request. However, Councilmember Hardy did inquire publicly about the process for reconsideration on December 17, 2019 and, at that time, Councilmember Chahal did not raise support for reexamination of mixed waste processing, any of the analysis that was presented on June 23, or argue for split-carts. That would have been the appropriate time to present his analysis for possible reconsideration of a split-cart option or issues with rates; however, he did not and there was no Councilmember that pursued a reconsideration of the mixed waste processing or further discussion on this matter. After no Councilmembers raised interest to pursue such action, the City Attorney was very clear at that December 17, 2019 Council meeting that the opportunity had now passed for reconsideration and no further action could be initiated by any Councilmember. Regardless of the quality of analysis presented by Councilmember Chahal, it was legislatively untimely.

Second, Councilmember Chahal made a presentation to the City Council titled *“Residential Rate Hike Analysis for Garbage: Split Bin option vs Green Waste Recovery Contract. How Green Waste Contract will cost residents millions of \$.”* This presentation was made as part of a legally noticed Public Hearing on the results of the Proposition 218 vote and recommending adoption of the rates based on a Council policy action taken six months ago. The Council’s Policy and Procedure Manual outlines specific instructions for how a Councilmember should add an item to the agenda. Council’s Policy and Procedure Manual # 030 (“Adding an Item on the Agenda”) clearly states:

PURPOSE: To establish a clear, effective and easily understood process for members of the City Council and the public to have items within the jurisdiction of the City Council, placed on the City Council agenda for consideration.

POLICY: Members of the City Council:

1. The Mayor or any individual Council Member may submit a written request to the City Manager’s Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.

Discussion of policy that is within the jurisdiction of the City Council should be noticed in compliance with the Brown Act for full community transparency. Given that the item on the agenda was to close out the legal process for Proposition 218 on a policy matter already determined by the Council six months earlier, Councilmember Chahal should have complied with the Council’s Policy informing the Council, community, and staff of his intent to raise previously discussed matters for which the Council had already set policy. Instead, Councilmember Chahal submitted his presentation on June 23 at 11:47 a.m. for a City Council meeting that began just one hour later, at 1:00 p.m. (with no time

for Councilmembers, community, or staff to analyze or review the materials). As evidenced with the quality of dialogue that evening, this action did not result in a clear, effective or easily understood analysis of the prior Council policy action and, more important, it completely lacked transparency and compliance with Council's Policy and Procedure Manual. Given that the community has had strong opinions on this policy decision, proper noticing of a Council discussion on this policy was warranted. Absent proper community noticing of the policy discussion, community members that felt strongly in support of the mixed waste processing were not afforded the opportunity to express their support of it, as afforded through the community survey and Proposition 218 outcome. Despite Council's commitment to comply with its own policies and procedures at the January 2020 Goal and Policy Setting meeting, the results of these actions were not compliant. Council would be wise to prevent these actions going forward by complying with its own policies, especially given the fact that there was plenty of time to comply with the Tentative Meeting Agenda Calendar (TMAC) reflecting this Public Hearing in May 2020.

Third, staff worked strategically to secure mixed waste processing capacity because GWR is the only solid waste facility within Santa Clara County with permitted capacity that was capable of processing all of the City's residential and commercial garbage in the short-term (see attached email and Info Memo). As stated earlier, a processing facility's readiness is a large factor in decision making and an overall cost structure for service. This mixed waste capacity is valuable, and the City did not want to miss the opportunity to secure it, knowing that other cities would be seeking the same capacity that the City was in process of pursuing to attain compliance with state laws relative to organics collection programs. This issue must be factored into any analysis of service.

Last, based on Council's December 2019 directions, the long-term contracts with MTWS and GWR were finalized and executed in April 2020. The negotiated terms in both agreements are based solely on the implementation of an organics diversion program that relies on mixed waste processing for recovery and do not include provisions for split-cart services. The agreement with GWR grants exclusive rights to process the City's residential and commercial garbage and includes the following provisions:

EXCLUSIVITY

1.1 Grant of Exclusive Right. The City shall deliver or cause to be delivered to Contractor:

- Mixed Waste. The City shall deliver or cause to be delivered to Contractor all Mixed Waste generated by Single Family (SFD) Customers, Multi-Family Customers, and Commercial Customers that is placed out for collection by the City or City's exclusively franchised hauler as Mixed Waste beginning January 1, 2021"

Combined with the Exclusivity clause, the agreement with GWR does not contain a clause that would enable the City to terminate for convenience. The agreement also does not allow the City the ability to securing mixed waste capacity from GWR without delivering solid waste and paying for the processing. Any attempt to breach the agreement and not deliver solid waste to GWR would likely result in litigation which would negate any savings to changing over to the split-cart program.

From: Deanna Santana <DSantana@SantaClaraCA.gov>
Sent: Monday, July 15, 2019 2:29 PM
To: Deanna Santana <DSantana@SantaClaraCA.gov>
Cc: Brian Doyle <BDoyle@SantaClaraCA.gov>
Subject: GreenWaste Recovery Negotiations Authorization_.pdf

Good Afternoon,

For the greater part of this year, we have been working to implement the City Council's direction relative to stabilizing our various contracts for solid waste, recycling, and mixed waste. Later this year, we will be before the City Council to provide an update on where we are at with these complex negotiations.

If you will recall, in order to enter into discussion with the City of Sunnyvale, the City required a Council Resolution authorizing us to explore the possibility of partnership. This did not prevent us from exploring other options, but we did begin our work with the City of Sunnyvale after receiving the proper approval to complete this due diligence. Through discussions with the City of Sunnyvale regarding mixed waste processing, it became clearer that additional due diligence was needed to make sure that we are pursuing the best possible solution for Santa Clara. Attached please find an Information Memo that summarized our due diligence and states that we are going to explore another option more to better understand how to make an informed recommendation to the City Council. I wanted to make sure that the City Council had a chance to review this memo and understand the context under which we are exploring options with GreenWaste Recovery. If this is a better and viable option, we will return to the Council for further consideration.

Please call me if you have any questions.

Thank you,

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**City of
Santa Clara**
The Center of What's Possible



Informational Memorandum

Date: July 17, 2019

To: Deanna J. Santana
City Manager

From: Craig Mobeck
Director of Public Works

Subject: Negotiations with GreenWaste Recovery, Inc. for Material Recovery Processing Services

SUMMARY

The purpose of this Informational Memo is to provide the City Council with an update on the Council direction, issued on January 29, 2019, to authorize the City to assess/participate in the initial planning for potential future use of the SMaRT Station in an effort to gain access to mixed waste processing capacity.

The City of Sunnyvale required a City Council Resolution that authorized City of Santa Clara staff to enter into exploratory discussion about the possibility of partnering on this topic and, accordingly, the City obtained the required Resolution and also reserved the opportunity to explore other options that are in the best interest of the City of Santa Clara.

After review of this option, staff is not confident that the SMaRT Station discussions will move quickly enough for it to be a viable option for organics recycling processing by 2022 and, consistent with the City's interest to secure mixed waste processing capacity, staff is advising of other options that it is exploring for the purpose of presenting additional actions before the City Council for policy consideration.

This Informational Memo provides background and information about the due diligence that staff has conducted to secure mixed waste processing capacity.

BACKGROUND

As presented at a Study Session on July 10, 2018, Governor Brown signed Senate Bill 1383 (SB 1383) in September 2016 establishing methane emissions reduction targets in a statewide effort to reduce emissions of Short Lived Climate Pollutants (SLCP) in various sectors of California's economy. SB 1383 establishes targets to achieve a 50 percent reduction from the 2014 level of the statewide disposal of organic waste by 2020 and a 75 percent reduction by 2025. The law grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets.

The City will need to implement new organic waste collection programs to comply with the SLCP regulations by 2022.

On May 9, 2017, the City Council authorized the implementation of a pilot food scraps recycling program for about 5,000 single-family households. The other source-

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separated collection program that can be implemented is one in which residents place their organic materials (food scraps and food soiled paper) in their Clean Green containers. Most multi-family dwelling and commercial business customers utilize large front load bins for garbage service. Multiple people use the bins which makes outreach and accountability more challenging and most of these properties currently have two bins - one for garbage and one for recycling. A more convenient option for multi-family dwellings and commercial businesses with limited solid waste enclosure space is to process the contents of the garbage container at a mixed waste processing facility to capture the organic waste for recycling purposes.

DISCUSSION

The City needs to secure mixed waste processing capacity to implement a two-bin system for organics recovery. Otherwise, the City will need to provide a third bin for commercial and multi-family organics collection. This may not be possible in some instances due to space constraints within the properties. Neither the City nor Mission Trail Waste Systems (MTWS) have agreements with a mixed waste processing facility to handle the City's organic waste. There are only three processors in Santa Clara County that have the current or potential ability to provide mixed waste processing services. The processors are:

- Sunnyvale Materials Recovery and Transfer (SMaRT) Station
- Republic Services, Inc.
- GreenWaste Recovery, Inc.

SMaRT Station

On January 29, 2019, the City Council adopted a Resolution for the City of Santa Clara to participate in the initial planning for potential future use of the SMaRT Station in an effort to gain access to mixed waste processing capacity. To date, there has been only one initial planning meeting to discuss a potential expansion of the SMaRT Station that would enable the City to use the facility for mixed waste processing. Staff is not confident that the SMaRT Station discussions will move quickly enough for it to be a viable option for organics recycling processing by 2022.

Republic Services, Inc.

The City has a landfill disposal agreement in place through December 31, 2024 with Republic Services, Inc. to utilize Newby Island Landfill and the Recyclery for landfiling and composting services. The Recyclery is currently performing mixed waste processing services for other agencies. Staff met with Republic Services, Inc. earlier this year to discuss the potential for utilizing the Recyclery for mixed waste processing of our multi-family and commercial business customer garbage. Republic Services, Inc. informed staff that they have limited permitted capacity available and they are reserving it for customers for which they provide collection services.

GreenWaste Recovery, Inc.

Staff also met with GreenWaste Recovery, Inc. (GWR) to discuss the potential to direct our multi-family and commercial business garbage to one of their facilities for mixed

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waste processing. GWR has been working on a 1,200 tons/day expansion at its Charles Street facility for three years, hopes to complete the EIR for expansion later this summer, and is seeking customers to help feed the expansion. GWR is not certain that the expansion will be completed by 2022, but believes that they could potentially start mixed waste processing at least a portion of the City's garbage before the expansion is completed.

NEXT STEPS

Given the above research and in review of viable opportunities for the City of Santa Clara, staff believes that GWR is the realistic/best opportunity to provide future mixed waste processing services for the City. Given that other jurisdictions will be seeking processing capacity to comply with the SLCP regulations by 2022, the need to specify an organics collection for the MTWS successor agreement negotiations, and the limited available processing options, time is of the essence.

Based on this information and our June 20 meeting on this topic, staff will be moving forward with negotiations with GWR for material recovery processing services and will introduce any necessary Council actions stemming from those negotiations at an upcoming meeting.

/s/

Craig Mobeck

Director of Public Works