



AGENCY: City Council
MEETING DATE: April 23, 2018
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving Waste Management Proposed Residential, Commercial and Multifamily, and Rolloff Rate Increases and Opposing Retroactive Application of Cost of Living Rate Adjustment to Such Rates

ISSUE:

The City's current Franchise Agreement (Agreement) with USA Waste of California, Inc., DBA Empire Waste Management (Waste Management) provides for the approval of all maximum rates and charges by the City Council and/or the City Manager prior to such rates and charges becoming effective.

Despite a statement to the contrary in letters from Waste Management to Fort Bragg Customers (Attachments 8, 9, and 10), neither the City Council nor the City Manager has approved the most recent rate increases or the retroactive application of those adjustments. Waste Management has stated that the cost-of-living rate increase of 6.52% is applied retroactively from 6-1-2017, as of the April 2018 billings and the .26% pass-through adjustment applied retroactively from 1-1-2018. The retroactive portion of these increases is to be spread over the April and May, 2018 invoices. As an example, this will add an additional \$10.29 to the April bill and \$10.28 to the May bill for a 32-gallon residential trash cart service with a normal monthly fee of \$33.30.

ANALYSIS:

Pursuant to the Agreement, Waste Management is entitled to rate adjustments in the form of pass-through adjustments, cost-of-living adjustments and extraordinary rate adjustments. The Agreement specifically allows for retroactive application of pass-through rate adjustments (Attachment 2, Section 15 A, Pass-through Rate Adjustment). However, the Agreement does not provide for retroactive application of the cost-of-living rate adjustment (Attachment 2, Section 15 B, Cost-of-Living Rate Adjustment), most likely because it provides for a date specific application – June 1st of each year.

Application of Adjustments

Pass-through adjustments are provided for in the Agreement (Attachment 2, Section 15 A, Pass-through Rate Adjustment). The Agreement states that a City surcharge or an increase in a City-owned disposal charge will be "passed-through" to the rate. The Agreement explicitly provides for retroactive application of a pass-through adjustment. Likewise, if another jurisdiction establishes or increases surcharges, fees or taxes, the increased expense may be added to the rate and applied retroactively. The rates provided for in the letter from Waste Management include a .26% increase due to tipping fees at the Mendocino County and privately-owned transfer stations. According to the Waste Management letters, this increase is applied retroactively to January 1, 2018.

Annual cost-of-living adjustments are provided for as of June 1st of each year in the Agreement (Attachments 2 and 6, Section 15 B, Cost of Living Rate Adjustment, as amended by Amendment No. 4 to Franchise Agreement Between the City of Fort Bragg and USA Waste of California Inc.,

DBA Empire Waste Management). The cost-of-living adjustment is based on the change in CPI-U, all items for the San Francisco-Oakland-San Jose CA and the most recently published California Index for #2 diesel fuel. The increase is defined as the sum of the following:

- The Fuel Component Increase: Existing Billed Rate X 3.3% x Diesel Fuel Index
- The Pass-through Component: None, since any increase is calculated per Section 15(A)
- The All Other Component: Existing Billed Rate X 58.1% X CPI Index

Per the Agreement, Waste Management is to notify the City of the CPI adjustment at least thirty days prior to the Adjustment Date (in this case June 1, 2017), so that there is sufficient time to review and approve the new rates prior to the rate adjustment date. There is no reference in the Agreement to retroactive application of a cost-of-living adjustment; this fact indicates that the parties to the Agreement did not intend to provide such application. Conversely, it is explicitly provided for in the pass-through and extraordinary rate adjustment clauses.

City Approval of Rate Increases

The Agreement Section 14 A, titled City's Powers, provides for City approval of all rates:

Maximum rates and charges assessed by Grantee for any and all services and activities it performs or engages in the Franchise Area, and which are covered under this Agreement, must be approved by the City Council and/or the City Manager prior to such rates and charges becoming effective.

A review of the prior correspondence indicates that there were a number of factors on the part of both the City and Waste Management that delayed approval and implementation of the rates by ten (10) months. As of February 13, 2018, Linda Ruffing sent an email (Attachment 11) to Waste Management's Public Sector Manager, Kayla Rodriguez and the local District Manager, Steve Shamblin, informing them that her last day was February 14, 2018 and she would not be able to finalize the matter. She assigned it to Tom Varga and indicated that final sign-off would come from the Interim City Manager or the new City Manager, who started on March 5, 2018. The email asked for an additional adjustment to the rate sheet and expressed concern about how Waste Management was going to collect the incremental fees due to the late implementation of the June 1, 2017 adjustment.

Neither the new City Manager nor Interim City Manager received any request or communication regarding approval of the rate changes or the retroactive application of those changes. Emails were sent to Tom Varga regarding the rate changes but no response or approval was provided by Mr. Varga or any City staff.

The issue came to the City Manager's attention on April 2, 2018, after letters (Attachments 9, 10, and 11) were mailed to Fort Bragg residents and business owners informing them that the City had just approved the June 2017 rate increase and the incremental increase would be retroactively applied in the April and May invoices. Waste Management was contacted to voice concern that neither the City Manager nor the City Council had agreed to the increases and further had not agreed with the retroactive application.

Staff has reviewed the rate adjustment calculations and concurs that they have been calculated correctly, however, staff does not believe that the cost-of-living increase should be applied retroactively.

RECOMMENDED ACTION:

Staff recommends that the Council adopt a Resolution to approve the cost-of-living rate adjustment of 6.52%, effective April 1, 2018 and that it should not be retroactively applied. Staff recommends the pass-through rate adjustment be approved per the Agreement retroactive to January 1, 2018.

ALTERNATIVE ACTION(S):

1. Do not approve the Resolution or the Waste Management rate increases. This action may not comply with the terms of the Agreement.
2. Approve the .26% pass-through adjustment and its retroactive application and approve the 6.52% cost-of-living adjustment and its retroactive application as provided for in the Waste Management letters to City residents and businesses. This action may not comply with the terms of the Agreement and will increase the cost of services.

FISCAL IMPACT:

The rate increases impact City of Fort Bragg Residents and Businesses. The retroactive application of the increases has a significant impact on the monthly charges for April and May, 2018.

ATTACHMENTS:

1. Resolution
2. Franchise Agreement
3. Amendment No. 1 to Franchise Agreement
4. Amendment No. 2 to Franchise Agreement
5. Amendment No. 3 to Franchise Agreement
6. Amendment No. 4 to Franchise Agreement
7. Proposed Rate Sheets
8. Fort Bragg Rate Increase Letter – Residential
9. Fort Bragg Rate Increase Letter – Commercial
10. Fort Bragg Rate Increase Letter - Rolloff
11. Email Dated 2-13-2018 from Linda Ruffing

NOTIFICATION:

None.