

## Jourdain, Brenda

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**Subject:** FW: WM City Council Agenda Item  
**Attachments:** 2018-04-18 Letter to City Attorney Fort Bragg.pdf

**From:** Rodriguez, Kayla [<mailto:krodrig4@wm.com>]  
**Sent:** Friday, April 20, 2018 1:43 PM  
**To:** Miller, Tabatha  
**Cc:** Shamblin, Stephen  
**Subject:** RE: WM City Council Agenda Item

Tabatha,

We have reviewed the agenda and we appreciate you providing us the information. However, we want to ensure that you as City Manager and the City Council understand Waste Management's position. The record of our discussions which I have provided to you, verify that the 2017-2018 rate adjustment and the retroactive application was approved by the prior City Manager (Linda Ruffing) via email dated December 19, 2017.

The delay in its implementation was attributable to the City's delay in finalizing its application. We would like to ensure that our position is made part of the public record on this matter. I have attached the letter sent to the City Attorney for your records.

Steve Shamblin the District Manager will be presenting on behalf of Waste Management on Monday night. Please let me know if you have any questions or concerns.

Thank You

**Kayla Rodriguez**  
Public Sector Manager  
[krodrig4@wm.com](mailto:krodrig4@wm.com)

**Waste Management**  
1324 Paddock Pl  
Woodland, CA 95776  
Tel 530-406-4332  
Cell 209-329-4989



**John Lynn Smith**  
Direct Phone: +1 415 659 4863  
Email: [jlsmith@reedsmith.com](mailto:jlsmith@reedsmith.com)

101 Second Street  
Suite 1800  
San Francisco, CA 94105-3659  
Tel +1 415 543 8700  
Fax +1 415 391 8269  
[reedsmith.com](http://reedsmith.com)

April 18, 2018

Via E-mail: [rah@jones-mayer.com](mailto:rah@jones-mayer.com)

Russell Hildebrand, Esq.  
City Attorney, City of Fort Bragg  
Jones & Mayer  
8150 Sierra College Blvd., Suite 190  
Roseville, CA 95661

Re: USA Waste of California, Inc., DBA Empire Waste Management request for rate adjustment

Dear Russ:

I wanted to follow up on our call earlier this week regarding Empire Waste Management's annual, contractually required rate adjustment for the period beginning June 1, 2017. As you mentioned in our discussion, the rate adjustment is on calendar before the Ft. Bragg City Council on April 23, 2018 and I wanted to make sure that you understood my client's position so it can become part of the record for said meeting.

Pursuant to Section 14 A of the 2007 Franchise Agreement by and between The City of Fort Bragg and USA Waste of California, Inc., DBA Empire Waste Management, maximum rates and charges assessed by the grantee must be approved by the City Council "and/or the City Manager" prior to such rates and charges becoming effective." Moreover, under Section 14 B (7) it is clear that ". . . the City is required to provide rate adjustments as set forth herein." Such rates include the Cost-of-Living ("CPI") rates as set forth in Section 15 B of the Franchise Agreement which establishes that Empire Waste Management is entitled to annual CPI rate adjustment beginning June 1<sup>st</sup> of each year.

While Section 14 A does provide the City Council with the authority to approve required rate adjustments, such authority also falls on the City Manager and it is my understanding that all prior required annual rate adjustments were approved not by the Council but by the City Manager. Consequently, Empire Waste Management followed such procedures and ultimately sought approval from the City Manager for the 2017 rate adjustment, which was granted.

Working with staff and those directors who review and approve rate adjustments initially requires documentation of a proposed adjustment and typically involves follow-up discussions to answer questions and/or address concerns the City may have. The process regarding the 2017-2018 rate adjustment began early and a document describing the CPI adjustment was provided to Louisa K. Morris, General Manager of the Mendocino County Solid Waste Management Authority, on June 2,



2017. The discussion with Ms. Morris apparently included the CPI adjustment as well as requested ancillary rates for Ft. Bragg. That process was cut short when Ms. Morris left her job, forcing Empire Waste Management to reach out to the then current City Manager, Linda Ruffing. In an August 8, 2017 e-mail to Empire Waste Management representatives, Ms. Ruffing said she was “. . . happy to pick up where Louisa left off.” She then asked for the price adjustment request and back-up information and concluded by saying “I look forward to getting this wrapped up.” However, it apparently took a significant amount of time for Empire Waste Management to receive a response. In an e-mail from Ms. Ruffing to Empire Waste Management representatives dated December 19, 2017 she said: “I would like to apologize for the delay in completing the review of WM’s proposed rate adjustment and I thank you for your patience.” Ms. Ruffing then made it clear that “(T)he rate adjustments as presented in the Excel spreadsheet . . . are consistent with the rate adjustment methodologies established in the franchise agreement. The proposed rates, effective 6/1/2017, are acceptable. Please also advise me as to how you will implement these rate increases retroactively, given that six months has passed since they should have taken effect.” Ms. Ruffing’s approval is obviously enforceable as it is an approval process acknowledged in the Franchise Agreement. Ms. Ruffing’s e-mail also raised a series of additional questions to which Empire Waste Management was asked to respond in order to move forward on the full rate implementation. In closing, Ms. Ruffing stated in her e-mail: “Again, thank you for your patience during this transition. Once I receive the back-up info requested under Item 2, above – let’s schedule a phone call, as I think we can wrap this up pretty quickly.” Again, it did not get resolved “quickly” and the process again involved a substantial delay with Ms. Ruffing’s departure as City Manager.

Once Ms. Ruffing left office the matter was apparently turned over to Tom Varga, the Public Works Director. In her departure, Ms. Ruffing indicated that “Once you and he (Mr. Varga) reach an agreement, if you need a final signature from the Interim City Manager (or our new City Manager who starts on March 5), Tom can arrange for that. Ms. Ruffing also indicated that she was concerned how the retroactive fees will be collected, but said “Tom will work with you to define an acceptable method of spreading the costs over time.” That, however, did not happen, as the finalization of the required rate adjustment seemed to again be put on hold as Empire Waste Management did not hear back from Mr. Varga, and apparently the newly appointed City Manager indicated that she was not agreeable to the approved rate adjustment, which must include its retroactive application in order to be consistent with the City’s obligations. Consequently, Empire Waste Management’s intent is to enforce the City’s contractual obligations and recover all rates to which it is entitled under the Franchise Agreement.

Again, I am happy to discuss this matter with you further and address any questions or other issues you may have. Also, I believe my client is willing to work with the City regarding implementation of the full rate adjustment, including the retroactive collections. However, it is not agreeable to forfeiting any

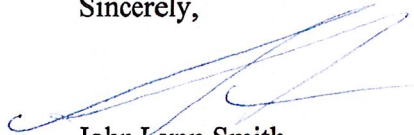
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Russell Hildebrand, Esq.  
April 18, 2018  
Page 3

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portion of the required rate adjustment for 2017-2018.

Sincerely,



John Lynn Smith