



*San Rafael*

Agenda Item No: \_\_\_\_\_

Meeting Date: January 4, 2016

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: CITY MANAGER**

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Sustainability & Volunteer Program Coordinator

**City Manager Approval:** \_\_\_\_\_ *JS*

**TOPIC: ANNUAL RATE SETTING FOR MARIN SANITARY SERVICE REFUSE RATES**

**SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ESTABLISHING MAXIMUM RATES COLLECTED BY MARIN SANITARY SERVICE FOR REFUSE AND RECYCLABLE MATERIAL COLLECTION AND DISPOSAL SERVICES, TO BE EFFECTIVE RETROACTIVELY TO JANUARY 1, 2016**

**EXECUTIVE SUMMARY:**

This report details the rate adjustment proposal for 2016 necessary for Marin Sanitary Service (MSS) to provide refuse, recycling and organics composting hauling and processing for customers ("rate payers") in San Rafael. Rate payers include residential homeowners, apartment owners, commercial property owners, and other businesses and tenants. The proposed rate adjustment with new programs would increase rates by 5.71% over 2015 levels for all rate payers. It includes adjustments based on an agreed-upon rate setting methodology the City has with Marin Sanitary Service and is based upon an independent third-party review of expenses and revenues by HF&H Consultants, LLC (HF&H).

**RECOMMENDATION:**

Conduct a public hearing and adopt the Resolution establishing maximum rates collected by Marin Sanitary Service for Refuse and Recyclable Material Collection and Disposal Services, to be effective retroactively to January 1, 2016.

**BACKGROUND:**

Each year, the City Council holds a public hearing to set the maximum collection rates that can be collected by MSS in the City of San Rafael. This Background section of the staff report will illustrate the overall context for the rate setting process. In general, the context includes I) the Franchise Agreement and rate-setting methodology with MSS, II) environmental initiatives, goals and regulations, and III) MSS's services and programs.

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**FOR CITY CLERK ONLY**

**File No.:** \_\_\_\_\_

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

**I. Franchise Agreement between City of San Rafael and Marin Sanitary Service**

California cities are allowed to regulate local refuse and recycling services under Article XI of the California Constitution and the California Public Resources Code and to collect a franchise fee. The City of San Rafael has a Franchise Agreement with MSS for refuse, organic materials, and recycling collection and services. The revenue-based methodology used to set the annual rates is contained in the Second Amendment to the Amendment and Restatement of Collection Agreement of the City of San Rafael with Marin Sanitary Service (Franchise Agreement) approved by the City Council on October 1, 2012. The Franchise Agreement sets forth the services to be provided by MSS, the rate setting methodology and the franchise fee paid to the City of San Rafael. As required under the current Franchise Agreement, the City Council holds an annual public hearing to set the maximum collection rates that can be charged by MSS for services outlined in the agreement

The Franchise Agreement provides for a detailed third-party review of MSS's operations every three years. In the interim two-year period, annual summary reviews are conducted based on the last detailed analysis. The last detailed review occurred in 2012 year for the 2013 rates. The proposed rate levels for 2016 are based on a detailed review. This three-year rate setting procedure is the industry-standard for rate-setting for refuse service. As noted on page 6 of the HF&H cover letter, several expense items are "trued-up" – or adjusted to match actual figures – every year, not just during a detailed review. Nonetheless, some items like Benefits only get trued-up every third year.

San Rafael, Larkspur, Ross, the County of Marin including within the Ross Valley Sanitary District boundaries, and the Las Gallinas Valley Sanitary District have contracts with MSS that utilize a similar rate setting methodology and have joined together as a Franchisors' Group to share information and reduce costs. The Franchisors' Group meets several times per year to oversee MSS's operations, and have met twice since October to review MSS's rate proposals and the work of the consultant conducting the rate review. The results of the rate review are presented in the "Analysis" section of this report.

The 2012 amendment to the Franchise Agreement included many new provisions in order to help stabilize rates, foster zero waste goals, and adjust to changes in the industry and MSS's services. Among the new provisions are comprehensive annual reporting to describe progress and achievements in meeting zero waste goals through 1) programs and activities approved by the Franchisors' Group, 2) public education reporting, and 3) reporting on new technologies and industry best practices to enhance progress towards zero waste. The 2015 Service Area Annual Report is included as Attachment D.

**II. Environmental Initiatives and Goals**

While perhaps the original purpose of refuse service had to do with public health and safety around sanitation, it is increasingly geared more toward making progress on waste reduction and climate change goals, which are also forms of public health and safety. The State of California has adopted several pieces of legislation mandating significant reductions of waste to landfill, recognizing the embedded environmental impacts and greenhouse gas emissions associated with them.

Consequently, the City's Climate Change Action Plan (CCAP) adopted in 2009, and subsequent Sustainability Element of the City's General Plan, included in 2011, identified eight specific programs under the category of "Reduce Material Consumption and Increase Resource Re-Use," six of which have been implemented to date. In addition, San Rafael is a member of the Marin Hazardous and Solid Waste JPA (JPA), which is the group charged with complying with

the California Integrated Waste Management Act of 1989. The goal of the Act is to reduce the flow of materials to landfills. The JPA Board is made up of city and town managers and the County Administrator.

The JPA prepared a Zero Waste Feasibility Study in December 2009 which identified a goal of achieving “zero waste in the next five to 17 years.” Zero waste has been defined as 94% diversion of materials from landfill, taking into account the need for producer responsibility and product stewardship, which is beyond local control. The City of San Rafael adopted a Zero Waste Resolution in August 2011 intended to be consistent with the JPA’s goals.

Marin County has a current diversion rate of 74%. The City’s consultant estimates that an 85% diversion rate by 2020 will result in an emissions decrease of 22,500 metric tons of CO<sub>2</sub>. MSS and the JPA are putting considerable time and effort into getting organics out of the landfill. The Commercial Food to Energy (F2E) program is in its third year and is expected to increase the diversion rate, and new statewide legislation, AB1826, which mandates commercial composting starting in 2016, is expected to increase it as well. According to a 2014 Waste Characterization Study, California disposes of approximately 30 million tons of waste in landfills each year, of which more than 30 percent could be used for compost, mulch, and/or energy.

In summary, the overall industry is moving from “bringing garbage to the landfill” to “resource hauling” including transport to recyclers and re-users to find the next highest and best use of materials, with the landfill being the last option. It should be noted that MSS has been a leader in this movement, as they have invested in facilities and technologies to divert materials from the landfill, many without ratepayer assistance, including the construction of the Marin Resource Recovery Center, Marin Recycling Center, and investments in the F2E program with Central Marin Sanitation Agency.

### III. Marin Sanitary Services and Programs

MSS provides residential, commercial and multi-family refuse services, including garbage, recycling and organics collection and processing. MSS also provides trash and recycling pick-up for City facilities, parks, and all sidewalk receptacles. Finally, MSS has a robust community outreach and education program, which provides free resources to customers and schools to encourage recycling and other zero waste activities.

*Residential service* includes single-family units and three or fewer units in a single structure. San Rafael residential customers receive weekly trash, recycling, and organics composting collection services.

*Commercial service* includes all businesses and residential apartment buildings with four or more units. Commercial customers receive separate trash and recycling containers as well as cardboard pickup, and may choose from a variety of carts, bins, and commercial compactors. In addition, customers are offered the choice of two commercial organics diversion programs. Customers with significant amounts of pre-consumer food waste may participate in the F2E program. Commercial customers with post-consumer food waste, food soiled papers, and yard waste may participate in the commercial composting program. All commercial services can be picked up from one to six times per week.

*Multi-family buildings* are considered commercial services since they are a business enterprise and operate differently than single family homes. They receive separate trash, recycling, and organics containers depending on the area available for can storage. MSS works with apartment managers and tenants to develop ‘green teams’ to increase recycling and

composting at their complexes.

**ANALYSIS:**

This section will specifically examine this year’s rate recommendations. Over the past fifteen years, the approved annual increase in Marin Sanitary Service rates have ranged from less than one percent to over 10% with an average of 4.51%. Last year’s rate increase was 2.77%.

In 2015, the Franchising Agencies again selected HF&H Consultants, LLC to conduct the rate review. HF&H has successfully reviewed the MSS rate proposal for several years, and is highly regarded in the industry. MSS reimburses the City and other Franchisors for the consultant’s fees for the rate review.

MSS submitted an initial rate application in August for 2016 with a proposed 11.02% increase over 2015 rates. HF&H conducted a review of the MSS rate proposal and recommended adjustments for Franchising Agencies based on allowable expenses in the rate setting methodology.

The full rate review and proposed adjustments are contained in the HF&H Report (Attachment C). The following table contains a summary of the rate increase components, which reflect projected costs for 2016 utilizing the agreed upon rate setting methodology in the Franchise Agreement.

Table 2: Rate Adjustment Factor Components

2016 Component Percentages	
Wages	1.64%
Benefits (including workers comp)	3.71%
Depreciation and Interest	0.84%
Maintenance	1.42%
Other Operating Costs <sup>(1)</sup>	2.51%
Fuel and Oil	(2.99%)
Disposal	(0.88%)
Subtotal Operations	6.25%
Revenue Surplus net of Franchise Fees	(0.64%)
Rate Adjustment Factor	5.61%

<sup>(1)</sup> Includes profit and general and administrative costs (e.g., public education, customer service, etc.)

**Increases**

This year’s rate increase is 5.61% (before new programs, covered below) due to a variety of factors as shown in the table. Wages increased mainly due to standard increases in accord with MSS’s collective bargaining agreement. Depreciation and interest reflects an increase in interest rates for bulk loans MSS has on their fleet. Maintenance costs increased due to newer equipment requiring more frequent and complex maintenance. For example, fully automated

trucks come with more intricate working parts that need to be maintained or can get damaged and need extensive repair.

The two highest increases were for Benefits and Other Operating Costs. Benefits comprised the largest portion of the rate increase, and were mainly due to a catch-up of actual benefits over the past year. As noted in the HF&H review, benefit costs grew by a much higher percentage than was accounted for in the indices, which is consistent with overall benefits cost increases for other waste haulers and in other industries as well.

Other Operating Costs is a broad category and comprises many items which added to the increase this year. Those included investments in technological equipment and software to collect better data and shore up accounts and services. This should result in more efficiencies over the coming years. It also included regulatory fees and professional fees to maintain state level regulatory compliance. There were also permit fees related to work at the facility. In addition, there was a one-time cost for updating their system-wide waste characterization study, which had not been done since 2008. Finally, there were costs associated with having an accounting firm assist with tonnage reporting and calculations in order to meet state and local reporting goals and requirements.

#### Decreases

Some line items were beneficial to the overall rate adjustment. Fuel and oil costs were significantly lower than projected and continue to show favorable effects on the rates even though they are projected to increase some in the coming year. In addition, MSS continues to negotiate favorable rates at disposal sites and is now bringing organics materials to the new Redwood Landfill composting program, which is much closer than their previous location in Zamora. Finally, Revenue Surplus net of Franchising Fees is the projected adjustment needed to meet the revenue requirement stipulated in the Franchise Agreement, which was a favorable adjustment this year

A more detailed analysis of these factors can be found on pages 3 - 7 in the HF&H Review (Attachment C). This review took longer than usual due to the conclusion of the Operational Improvement Plan (OIP), which is ending this year. This OIP was agreed upon by the Franchisors' Group entities in 2012, and should produce long term rate benefits as the operation becomes more efficient. The expenses related to the OIP cut across the categories above. Examples of long-term positive outcomes would be lower workers compensation injuries, less fuel and oil as routes are cut, and more accurate billing to capture accounts that were not being billed.

#### New Programs

Franchisors' Group entities communicate program ideas they would like to see to MSS, and in turn MSS researches costs and includes new program proposals in the annual rate application. After a review of the costs in conjunction with the current rate adjustment, the final proposal is as follows:

1. Increase composting in multi-family accounts
2. Increase residential customers' ability to dispose of refuse that doesn't fit into their normal weekly service
3. Provide assistance with illegal dumping.

In order to do this, MSS would utilize existing resources freed up from efficiencies gained by the OIP. They would also swap out the current coupon program in existence in San Rafael whereby customers can take up to 1 cubic yard of materials to the dump twice per year during a Spring

and Fall Cleanup Program. MSS proposes to phase out that program after the spring coupon in 2016 and phase in a 2 cubic yard curbside pickup of extra refuse in the fall, which would eliminate the customer's need to transport it themselves. In addition, MSS proposes adding one bulky waste pickup in the fall as well, which would allow customers to dispose of up to two large items at curbside. In 2017 customers would receive these services twice per year.

The illegal dumping program would be in conjunction with the bulky waste pickup program whereby MSS would offer to assist San Rafael Public Works with a small amount of illegal dumping pickup using the same truck and crew. MSS will work with Public Works to determine the best use of this assistance within the confines of an annual load limit in tons.

Multi-family organics composting is soon to be a requirement under State law. AB1826 was passed last year requiring composting for commercial entities depending on the amount of waste they generate per week. This law also requires that on and after January 1, 2016, local jurisdictions across the state implement an organic waste recycling program to divert organic waste generated by businesses, including multi-family residential dwellings that consist of five or more units. An organics pilot conducted in 2014 determined the most effective outreach methods to increase participation and the most efficient mechanism for collection. MSS has determined they would need to provide composting to approximately 750 multi-family dwellings (approximately 15,000 tenants) in order to comply with the new law.

MSS worked with HF&H to determine appropriate costs and these proposed new programs would add 0.1% to the rate adjustment this year, bringing the total to 5.71%. Staff in the Franchisors' Group is in agreement that these programs would be beneficial to customers, and would satisfy state requirements mandating recycling and composting at multi-family dwellings.

#### Recycling Revenue Fund

Another item of note is the recycling revenue fund, initiated in the new rate methodology mentioned previously. The intention of this fund is to lessen the impact of a very volatile commodities market for recyclable materials. For example, prices for PET plastics which are used a lot in beverage bottles went from 6.5 to 8 cents per pound in November to 3 to 5 cents per pound in December. Should the fund exceed a base level of \$250,000 the Franchisors' Group entities could utilize the fund for zero waste activities.

Last year's recycling revenues resulted in a current balance in the fund of negative \$19,825. As intended, this reduction in recycling revenue did not impact the overall rates. However, should the fund exceed a balance of negative \$250,000, the Franchisors' Group and MSS would need to meet to determine a reasonable remedy for the company.

#### Rate Payer Categories and Comparisons

With the above recommendation, the cost of a 32 gallon residential landfill cart would be increased approximately \$1.83 per month, from \$32.05 to \$33.88. The cost of commercial service for a 3 yard landfill dumpster picked up once per week would be increased by approximately \$22.61 per month, from \$395.94 to \$418.55. Recycling is included in all accounts. Businesses with a vigorous recycling program can reduce their regular container size or pickup schedule resulting in lower rates.

As part of conducting the rate application review, the Franchisors' Group asked HF&H to conduct a survey of Bay Area refuse haulers. The actual survey results from our neighboring communities are included in Attachment C. It summarizes the survey data for residential 30-35 gallon can weekly service with weekly curbside recycling and weekly organics pickup. The

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2016 proposed rate of \$33.88 in San Rafael is slightly lower than the Marin County average of \$35.27. Attachment C also compares the City's three-yard commercial bin (once a week) service to those of all Bay Area cities and agencies with similar services. The San Rafael rate of \$418.55 is slightly lower than the average of other Marin County jurisdictions which is \$420.22. San Rafael's rates have traditionally been comparable with rates in other Bay Area jurisdictions.

As in previous years, staff is recommending that the rate adjustment be applied across the board to all residential, multi-family and commercial service accounts. Actual rates for all services are provided as an attachment to the Resolution included with this report.

### **COMMUNITY OUTREACH:**

Notice of the public hearing was published twice in the *Marin Independent Journal* (Attachment B) and mailed to all names on file with the City Clerk. Information on the maximum annual rate that MSS can collect is available at the City Clerk's office during the 10 days prior to the public hearing. The proposed rate information is also provided directly to the San Rafael Chamber of Commerce, the Business Improvement District, Marin Builder's Association, and other interested parties. This year, Staff also provided the Staff Report and all other Council documents to these interested parties 12 days in advance to give more time for public review.

### **FISCAL IMPACT:**

The attachment to the Resolution (marked Exhibit C) contains the complete rate request. As shown, the 5.71% overall increase is applied to all customer types and service options. If approved, these rates are projected to satisfy the City's contractual obligations to meet the MSS revenue requirement to cover San Rafael refuse and recycling service costs, including franchise fees.

### **OPTIONS:**

The City Council may choose to:

1. Accept the staff recommendation to institute the maximum MSS rate increases and allocations recommended in the HF&H Report plus new programs, pursuant to the rate setting methodology set forth in the current Franchise Agreement and shown in the attachment to the Resolution effective retroactively to January 1, 2016.
2. Not accept the findings of the HF&H Report and the staff recommendation and provide additional direction to staff.

### **RECOMMENDED ACTION:**

1. Open the public hearing and accept public testimony;
2. Close the public hearing;
3. Accept the report and adopt the resolution as presented

### **ATTACHMENTS:**

Attachment A: Resolution with Rate Schedule (marked as Exhibit C)

Attachment B: Affidavit of Publication

Attachment C: HF&H Review of MSS Rate Application, including Bay Area Rate Survey

Attachment D: MSS 2015 Service Area Annual Report