



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: April 21, 2020
TO: Christine Daniel, City Manager
FROM: Mary Grace Houlihan, Public Works Director
SUBJECT: **Waste Management of Alameda County's Notice of Force Majeure And Ongoing Changes To Solid Waste, Recycling, And Composting Services In Emeryville**

RECOMMENDATION

Staff recommend that Council receive this informational report on Waste Management of Alameda County's (WMAC's) March 22 Notice of Force Majeure and related existing and potential changes to service.

BACKGROUND

In response to the COVID-19 pandemic, on March 16, 2020, the Health Officer of the County of Alameda issued an Order requiring residents to shelter in place, and listing exempted essential activities. Section 10 c of that Order listed solid waste collection and removal as work necessary to the operations and maintenance of "Essential Infrastructure." In a subsequent Order dated March 31, 2020 (Order No. 20-04), section 13 c, this definition was expanded to include disposal and processing facilities.

On March 22, WMAC sent the City a Notice of Force Majeure, attached. The City's Franchise Agreement with WMAC includes pestilence as one potential trigger for invoking Force Majeure, and as such WMAC's March 22 Notice of Force Majeure appears to be appropriate. The Notice listed "disruptions that will likely occur" as a result of the pandemic, including:

- Inter-city, intrastate, interstate, or cross-border travel restrictions;
- Quarantines at, or shutdowns of, Waste Management facilities;
- Additional Stay at Home, Shelter-in-Place or other restrictive orders that restrict travel and business operations;
- Closure of Call Centers; shutdown of Waste Management and/or third-party recycling, transfer and disposal facilities that restrict our ability to operate as normal;
- Suspension of requirements regarding pre-approval and advanced notifications to our franchises and municipalities regarding customer communications;
- Suspension of non-essential waste collection (e.g., bulky, yard waste, etc.);
- Worker shortages due to quarantines, sickness and COVID-19 exposure;
- Fuel and other critical equipment, materials and supply shortages caused by, vendor shutdowns including tires, parts and third-party services; and

- Shutdown of commercial customers' businesses and requests for cessation of services.

Section 26.10 of the Franchise Agreement does not describe specific obligations that may or may not be suspended under Force Majeure, but rather gives general conditions by which WMAC can fail to meet performance obligations without being in default of the agreement including 1) having taken reasonable precautions, if possible, and 2) notifying the City in writing with information about the extent of the Force Majeure event and the steps it intends to take to restore its ability to perform.

DISCUSSION

The City has received several updated notifications from WMAC describing changes to their operations. The changes they have notified the City of in the first two weeks of the Force Majeure event include:

- The closure of call centers and customer service offices and the subsequent initiation of work-from-home call centers for both residential and commercial customers,
- The implementation of social distancing protocols for all employees not working from home,
- The closure or significant reduction in capacity of the recycling sorting capacity of all five Materials Recovery Facilities (MRFs) in the region,
- The cessation of all bulky waste pickups through July 1,
- Sending construction and demolition waste, commercial recycling, and commercial organics wastes directly to landfill,
- Allowing commercial customers to "pause" or minimize service without changing equipment, and
- Allowing personal containers to be placed for collection with WMAC carts on residential collection days.

Staff continue to request detailed, complete, and accurate reporting on changes as they are planned or occur. On April 3, 2020, Nancy Humphrey, Environmental Programs Supervisor, wrote to WMAC requesting documentation of the conditions preventing the fulfillment of their obligations, and asking WMAC to provide information about its plans for identifying and prioritizing essential services within Emeryville to prepare for the possibility that further service reductions may be necessary.

On April 10, 2020, staff received a response from WMAC to Ms. Humphrey's April 3rd letter. That response has been added as an attachment to this staff report.

FISCAL IMPACT

The City of Emeryville receives franchise fees from WMAC calculated as 21% of gross revenue, payable monthly. In 2019, franchise fees received by the City totaled \$1,263,965. WMAC estimates that their franchise revenues will be down 15-40% for

calendar year 2020, depending on the jurisdiction. That amounts to an estimated reduction in payments to the City of \$189,595 to \$505,586 for 2020. Since business activity is sharply down, and more than 70% of income for WMAC in Emeryville is in commercial service, it may be prudent to anticipate lost revenues toward the top of that projected range.

STAFF COMMUNICATION WITH THE PUBLIC

Information about service changes has been posted on the City's website. No public meetings are possible at this time.

CONCLUSION

Governmental responses and organizational capabilities are constantly changing in response to the COVID-19 pandemic, and the information provided here will likely have to be updated for the report to Council.

PREPARED BY: Nancy Humphrey, Environmental Programs Supervisor

APPROVED AND FORWARDED TO THE CITY COUNCIL:



Christine Daniel, City Manager

ATTACHMENTS

- March 22 Notice of Force Majeure
- April 3 Letter to WMAC
- April 10 Response from WMAC to City's Letter