

City of Hesperia

STAFF REPORT



DATE: March 21, 2017

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Rachel Molina, Assistant to the City Manager
Casey Brooksher, Senior Financial Analyst
Julie Ryan, Management Analyst

SUBJECT: Advance Disposal Rate Structures

RECOMMENDED ACTION

It is recommended that the City Council approve new maximum rates for solid waste services in the City of Hesperia and allow for rate adjustments annually up to five years pending the outcome of a Proposition 218 public hearing, and provide any feedback on services provided to the City by the waste hauler.

BACKGROUND

On February 21, 2012, a Proposition 218 hearing was held where the City Council approved the "Amended and Restated Exclusive Franchise Agreement" (Franchise Agreement) with Advance Disposal for the collecting, hauling and processing of all solid waste in the City of Hesperia and approved the maximum rate structure with automatic adjustments to occur annually for five years, which sunset occurred on February 21, 2017. As detailed in the Franchise Agreement, Advance Disposal has the right to request a Cost of Living Adjustment (COLA) to its rates on each anniversary of the Franchise Agreement and pass-through to rate payers any increase in tipping fees charged by the County of San Bernardino. As stated in the Franchise Agreement, rate adjustments can continue as approved by a Proposition 218 hearing, on an annual basis for up to five years. Any further adjustments will be subject to a new Proposition 218 process.

ISSUES/ANALYSIS

Annually, the Franchise Agreement allows Advance Disposal the opportunity to request increases to the current rate. Two adjustments to the current rate structure are being requested, with the first being an increase to the annual inflationary increases or Cost of Living Adjustment (COLA) and the second is the increase of the landfill tipping fees charged by the County of San Bernardino. In addition, by increasing the COLA and tipping fee, the franchise fee will increase.

The adjustments for annual inflationary increases, or COLA, accounts for the increased cost of providing refuse services and reflects increases in, among other things, the cost of labor, electricity, supplies, equipment and gasoline. As outlined in the Franchise Agreement, the COLA is based on the Consumer Price Index (CPI) for Los Angeles-Anaheim-Riverside-Orange-County with the index dates of September to August of the preceding year. The CPI increase for the period outlined is 1.7%. By increasing the service component of the residential

rate by 1.7%, the increase will be \$0.31 per month, while the increase in the commercial rate for the three cubic yard bin will be \$2.08 per month.

The landfill tipping fee charged to Advance Disposal by the County of San Bernardino is the cost of delivering refuse to a County landfill. In FY 2016-17, the County of San Bernardino tipping fee was \$37 per ton, while the FY 2017-18 tipping fee will be \$37.13, which equates to a 0.351% increase to the disposal component. As a result, the regular residential rate will increase by \$0.02 per month and a commercial rate customer using a three cubic yard bin will experience an increase of \$.08 per month.

The final increase is the calculation of the franchise fee paid to the City. The franchise fee is calculated on 10% of Advance Disposal's gross revenue, with an exclusion of the Material Recovery Facility (MRF) expansion rate. By using the example of the residential rate, the COLA and tipping fee increase totaled \$0.33 per month, the franchise fee equates to \$0.04 increase per month. Moreover, the total increase to the commercial rate for the three cubic yard is \$2.16 per month, which equates to a franchise fee increase of \$0.22 per month.

The rate structure in Attachment 1 lists the new maximum residential rates as modified by the 1.7% COLA and the \$0.13 pass-through tipping fee increase. If approved, the maximum regular residential monthly rate will increase from \$26.96 to \$27.33.

In addition to the annual request for COLA and tipping fee adjustments, Advance Disposal is requesting new service rates for service types not previously listed on the rate structure. These proposed rates are included as Attachment 2 and Attachment 3.

The City Attorney's office has advised that water, sewer and solid waste fee increases are subject to Proposition 218 notice, hearing, and majority protest procedures in accordance with the California Supreme Court's decision in *Bighorn v. Verjil*, which was decided in July, 2006. Prior to the *Bighorn* case the prevailing view was that water, sewer and solid waste fees were not "property-related" fees subject to Proposition 218, but this view has now been rejected by the Court. Although the *Bighorn* case dealt specifically with water rates, the City Attorney's office believes the Court would likely treat sewer and solid waste fees the same, and thus recommends a conservative approach.

Proposition 218 requirements include a public hearing not less than 45 days after mailing a notice to each property owner. At the hearing, the City Council must consider any protests against the fee increases. If written protests are presented by a majority of owners, the fee increase cannot be imposed. The recommended Proposition 218 hearing will include rate adjustments annually for up to five years.

Although the proposed increase is contractually provided for in the Franchise, the COLA adjustment, pass-through of the tipping fee and the increase of the franchise fee request is an action requiring Council ratification and resolution. If the City Council approves the proposed rate increases, staff will initiate the mailed notice and set a public hearing for a future Council meeting. The notice will also include the new service rates and new service types noted on Attachment 2 and Attachment 3.

FISCAL IMPACT

There is no negative fiscal impact to the City associated with this action. Franchise fees will move upward with the associated increase in rates.

ALTERNATIVE(S)

1. As the proposed increase is contractually provided for in the Franchise Agreement, the COLA adjustment and pass-through request is an action requiring Council ratification. A vote to not approve the adjustments could result in a possible breach of contract action.
2. The Council may provide alternative direction to staff.

ATTACHMENT(S)

1. Rate Structure 1: COLA and Tipping Fee Adjustment
2. Rate Structure 2: New Service Type Requests
3. Rate Structure 3: Changes in Rate Computation