



DISCUSSION

City of San Bernardino Request for Council Action

Date: July 3, 2024

To: Honorable Mayor and City Council Members

From: Rochelle Clayton, Acting City Manager
Lynn Merrill, Director of Public Works, Operations & Maintenance

Department: Public Works

Subject: **Consideration of the Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc. (All Wards)**

Recommendation:

It is recommended that the Mayor and City Council of the City of San Bernardino, California, adopt Resolution No. 2024-111;

1. Approving the Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc.

Executive Summary

Consideration of approval of the Third Amendment to the Franchise agreement between the City of San Bernardino and Burrtec Waste Industries, Inc. to continue the current \$26.42 per month rate for Single Family and Multi-Family Dwelling units and all other per month rates as currently set forth; implementing the SB 1383 Regulations to require residential and commercial waste generators to participate in organic recycling programs, and extending the existing franchise agreement from March 31, 2026 to March 31, 2031.

Background

The City of San Bernardino has an exclusive Franchise Agreement (Agreement) with Burrtec Waste Industries, Inc., (Burrtec) to provide waste and recycling services to all residents and businesses in the City, effective April 1, 2016 through March 31, 2026. The initial rate set forth for Single or Multi-Family Dwellings for the period April 1, 2016 through June 30, 2017 was \$22.84 per month. The original Franchise Agreement has

been amended twice. The First Amendment to the Agreement made adjustments to the list of City-owned vehicles, including those that were originally purchased by Burrtec. The Second Amendment to the Agreement further revised the list of City-owned vehicles to account for vehicles that had been disposed of by the City. Both the First and Second Amendments were approved in January of 2016.

Under Section 21.1.3 of the Franchise Agreement, Burrtec is allowed to submit a proposed annual Consumer Price Index (CPI) inflationary rate adjustment and rate schedule to the City Manager for review by March 1 each year. The Agreement also caps the annual CPI rate adjustment at 5%, with any amount above 5% or below 0% carried forward and applied in subsequent years. These rate adjustments would take effect July 1st of each year.

Senate Bill (SB) 1383, (Lara, Chapter 395, Statutes of 2016), was passed by the Legislature to reduce greenhouse gases produced by organic material in the waste stream. The California Department of Resources Recycling and Recovery (CalRecycle) adopted regulations to implement SB 1383 (SB 1383 Regulations) and has a large impact on solid waste services the City was required to provide to its residents and businesses beginning January 2022. Because these mandated services are not included in the current Agreement, an amendment is now required to incorporate them.

In 2021, the annual CPI adjustment increased the Single Family and Multi-Family Dwelling rate from \$22.84 to \$26.42 per month. In 2022, the annual CPI adjustment was deferred due to negotiations with Burrtec. In late 2022, the City and Burrtec commenced negotiations relating to the implementation of the SB 1383 Residential Program and a subsequent rate adjustment as a result of changes in law which required the provision of organic waste programs due to the SB 1383 Regulations. An initial public hearing was scheduled for February 15, 2023 and the Proposition 218 notice was mailed 45 days before the February 2023 hearing. Staff prepared a Third Amendment to the Agreement to include required changes due to the SB 1383 Regulations. However, the City scheduled a subsequent public hearing on May 17, 2023 to provide for adequate notice.

The proposed rate for Single Family and Multi-family dwelling units was \$37.97. At the May 17, 2023 Council meeting, Council directed staff to continue the Public Hearing to June 21, 2023 and conduct additional negotiations with Burrtec for a lower rate. On June 31, 2023, staff requested that the Public Hearing be again continued to July 19, 2023. On September 6, 2023, staff again requested that the Public Hearing be continued to January 17, 2024 and staff advised that they had retained R3 Consulting Group (R3 Consulting), a nationally recognized solid waste consulting firm, to conduct the rate analysis and provide draft language for a Third Amendment to the Agreement. At the January 17, 2024, Council meeting, staff requested that the Public Hearing process be terminated, and that a new rate proposal be brought forward by May 1, 2024.

Over the last eight months, R3 Consulting has assisted the City in negotiations. Staff has worked with R3 Consulting to complete a thorough review of the Agreement, identify

changes that needed to be made to implement the SB 1383 Regulations, and negotiate revisions to the Third Amendment to incorporate these changes.

Section 4.3 of the Agreement “Term Extensions” permits the City to negotiate at its discretion, one five-year extension to the Agreement, which would extend the term from March 31, 2026, to March 31, 2031. Pursuant to Section 4.3, the City negotiated with Burrtec between April 1, 2023 and ended March 31, 2024.

At the January 17, 2024, Council meeting, staff advised the Council that it was expecting to request proposals for new solid waste and recycling services prior to expiration of the existing Agreement on March 31, 2026. Based on business considerations, on March 29, 2024, Burrtec submitted a proposal to retain the existing rates in exchange for the City extending the term by five years. Staff and R3 reviewed this revised proposal. The key elements of the proposal are set forth in the Discussion section below.

Discussion

SOLID WASTE RATES – Burrtec has proposed to hold the residential solid waste rates to the current monthly rate of \$26.42 through June 30, 2025. This means that the City of San Bernardino will have the lowest residential monthly rates of any of the cities within the County. Staff conducted a survey of solid waste rates in the larger San Bernardino and Riverside metropolitan areas, and the result of the survey are shown in the table in Exhibit 1. As shown in Exhibit 1, Residential rates for Single Family dwellings currently range from \$28.08 for Loma Linda to \$40.77 per month for Redlands. The average residential solid waste rate among the 18 cities is \$34.51.

The proposed rate set forth by Burrtec at \$26.42 per month for FY 24-25 would place the City at the absolute lowest rate in the Inland Empire among the 18 surveyed cities. This rate would also serve as the base rate for additional rate increases, starting in July 2025.

SB1383 IMPLEMENTATION – Burrtec proposes to implement the SB1383 Residential and Small Commercial Generator Program, effective July 1, 2024. This will bring the City into compliance with State requirements and will prevent any potential enforcement efforts by CalRecycle, including, but not limited to, possible \$10,000 per day fines against the City.

STREET SWEEPING SERVICE ISSUES – Burrtec has retained a new street sweeping contractor who is fully compliant with the requirements of the street sweeping program, and uses Global Position System. This will allow the City to better monitor the sweeping program, including complaint resolution.

PERIOD OF PERFORMANCE – Burrtec is requesting that the City extend the term end date of the Agreement by five years, from March 31, 2026 to March 31, 2031.

Staff and R3 have reviewed Burrtec's proposal, which is set forth in the attached Third Amendment. Staff recommends Council adopt the Third Amendment as it offers the best value to the City's rate payers, makes more staff resources available to achieve high priority goals, avoids costly processing and ensures immediate legal compliance with state laws that could otherwise result in costly fines to the City.

If the Third Amendment is approved, there will be no need to hold a Public Hearing in 2024 to adopt rates, because the rates would remain the same. A Public Hearing would be necessary in May 2025, if Burrtec seeks a rate increase for its annual CPI increase.

This item was originally scheduled for consideration by the City Council at the May 15, 2024, meeting; however, it was determined that additional language changes needed to be negotiated between the City and Burrtec to address, correct and clarify some aspects of the Third Amendment. As a result of final negotiations between the City and Burrtec, the following additional language/changes were agreed to between both parties:

- 1) Deletion of proposed changes to the Term Extension;
- 2) Revisions to the "Procurement of Recovered Organic Waste" section to revise the quantity of recovered compost and mulch Burrtec procures on behalf of the City to 30% of the City's annual recovered organic waste target and to add appropriate language for Burrtec to act as the City's direct service provider for delivering additional compost and mulch quantities to third parties. Currently, the State requires cities and counties to acquire more recovered organic waste than can be used by the jurisdiction. These additional quantities are being shipped to third party farmers so the City can meet 100% of its annual recovered organic waste target, as required by the SB 1383 Regulations. This language ensures that Burrtec will assist the city in facilitating those third-party deliveries as the City's direct service provider.
- 3) The addition of SB1383 requirements for Multi Family and Commercial, including new definitions, review of containers for contamination of materials and the implementation of the edible food recovery program.
- 4) Expands Burrtec's responsibilities for Outreach and Education to include both the residential and business communities.
- 5) Deletes proposed revisions to the "Maximum Permitted Service Rates" section. The current process to adjust rates will remain the same.
- 6) The "Liquidated Damages" section will be updated to include a new liquidated damages schedule

2021-2025 Strategic Targets and Goals

Adoption of the proposed Third Amendment to the Franchise Agreement aligns with Key Target No. 3c: Improve Quality of Life by evaluating and enhancing the quality of public safety services and Key Target No. 3d: Improve Quality of Life by improving the City's appearance, cleanliness, and attractiveness.

Fiscal Impact

There will be no impact on the General Fund. Revenues to the General Fund shall remain the same.

Conclusion

It is recommended that the Mayor and City Council of the City of San Bernardino, California adopt Resolution No. 2024-111;

1. Approving the Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc.

Attachments

Attachment 1	Resolution No. 2024-111
Attachment 2	Table of Solid Waste Rates
Attachment 3	Third Amendment to the Exclusive Franchise Agreement
Attachment 4	Exhibit 1 – City of San Bernardino Maximum Permitted Rates 2024
Attachment 5	Original Burrtec Franchise Agreement

Ward:

All Wards

Synopsis of Previous Council Actions:

January 25, 2016 – Resolution of the Mayor and City Council of San Bernardino approving a ten-year Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc.

December 7, 2022 - Notice of Intent to Conduct a Public Hearing on December 7, 2022, to Consider Adjusting the Maximum Permitted Service Rates for Integrated Solid Waste Collection, and Organic Waste Collection, Processing and Disposal Services, Street Sweeping, and Right-of-Way Cleanup Service.

February 15, 2023 - Public Hearing Regarding Solid Waste Rate Increases and

Resolution Adopting Rates for Solid Waste Services, Approving Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc., and Finding the Action Exempt from the California Environmental Quality Act (All Wards).

May 17, 2023 - Public Hearing Regarding Solid Waste Rate Increases and Resolution Adopting Rates for Solid Waste Services, Approving Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc., and Finding the Action Exempt from the California Environmental Quality Act (All Wards)

June 21, 2023 - Continuation, to July 19, 2023, of Public Hearing Regarding Solid Waste Rate Increases and Resolution Adopting Rates for Solid Waste Services, Approving Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc., and Finding the Action Exempt from the California Environmental Quality Act.

July 19, 2023 – Continuation to September 6, 2023, of Public Hearing Regarding Solid Waste Rate Increases and Resolution Adopting Rates for Solid Waste Services, Approving Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc., and Finding the Action Exempt from the California Environmental Quality Act.

September 6, 2023 - Continuation, to January 17, 2024, of Public Hearing Regarding Solid Waste Rate Increases and Resolution Adopting Rates for Solid Waste Services, Approving Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc., and Finding the Action Exempt from the California Environmental Quality Act.

January 17, 2024 - Cancellation of January 17, 2024, Public Hearing Regarding Solid Waste Rate Increases and Resolution Adopting Rates for Solid Waste Services, Approving Third Amendment to the City's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing and Disposal Services with Burrtec Waste Industries, Inc., and Finding the Action Exempt from the California Environmental Quality Act.