



DISCUSSION

City of San Bernardino Request for Council Action

Date: December 7, 2022

To: Honorable Mayor and City Council Members

From: Robert D. Field, City Manager
Daniel Hernandez, Agency Director of Public Works,
Operations and Maintenance

Department: Public Works

Subject: **Notice of Intent to Conduct a Public Hearing on
February 15, 2023, to Consider Adjusting the
Maximum Permitted Service Rates for Integrated Solid
Waste Collection, Processing and Disposal Services**

Recommendation:

Provide staff direction on its preferred rate structure option (from among Options 1, 2, and 3) in order for staff to finalize and mail the Proposition 218 notice for solid waste service rate increases.

Adopt Resolution No. 2022-244 of the Mayor and City Council of the City of San Bernardino, California, declaring its intention to conduct a Public Hearing on February 15, 2023, to consider adjusting the Maximum Permitted Service Rates for Integrated Solid Waste Collection, Processing and Disposal Services.

Background

The City of San Bernardino ("City") has an exclusive franchise agreement with Burrtec to provide solid waste collection, processing and disposal services within the City. Recent changes to state law relative to organic waste collection will require modifications to the existing Agreement, which the City and Burrtec are currently negotiating. The proposed rate increases for solid waste services are necessary for Burrtec to provide mandatory organic waste collection services pursuant to the SB 1383 Regulations. Under Proposition 218 (Article XIII D, Section 6 of the California Constitution), notice of a public hearing regarding rate increases must be mailed to property owners and tenants of the properties receiving solid waste collection services at least 45 days in advance of the scheduled public hearing. The proposed resolution would set the public hearing for February 15, 2023, in order to satisfy the notice requirements.

Discussion

Consumer Price Index Adjustments

Section 21.1.3 of the franchise agreement between Burrtec and the City provides that Burrtec may increase the Maximum Permitted Service Rates by the Consumer Price Index ("CPI") starting on July 1, 2017, and each July 1 thereafter. Burrtec must send the proposed rate adjustment calculations and full rate schedule to the City Manager for review by March 1 of each Agreement Year (July 1 - June 30), or no adjustment shall be made for that Agreement Year. On February 28, 2022, Burrtec submitted a proposed rate adjustment to the City Manager along with the proposed rate adjustment calculations and a full rate schedule, in accordance with the Franchise Agreement. Under Section 21.1.3 of the Franchise Agreement, if the proposed Maximum Permitted Service Rates are correctly calculated, the new rates will be implemented by Burrtec beginning July 1 of the Agreement Year. The franchise agreement allows for a CPI rate adjustment to a maximum of a 5% increase annually. Since the CPI adjustment is subject to a public hearing under Proposition 218, Burrtec agreed to take up the CPI adjustment and the SB 1383 rate increases at the same time in a single Proposition 218 hearing. The regional CPI has recently changed, and the "CPI" for the rate increases shall refer to the 12-month annual average percentage change for the most recent January 1 – December 31 period, compared to the prior January 1 – December 31 period, in the All Urban Consumers Index (CPI-U), Not Seasonally Adjusted, All Items, Riverside-San Bernardino-Ontario, CA, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

SB 1383 Requirements

Proposed rate increases for Solid Waste Services are necessary for Burrtec to provide mandatory organic waste collection services pursuant to the SB 1383 regulations. Under the SB 1383 Regulations, residents and businesses must separate organic waste (such as yard waste and food waste) from other trash to be managed at a facility other than a landfill. To accomplish this, all property owners, residents, and businesses will be required to enroll in collection services for trash, recyclables, and organic waste. Recycling services include processing of recyclables and organic wastes collected from all customers at state-regulated facilities. Other portions of the solid waste service rate include fees charged to customers to provide inspections, enforcement, and oversight; maintain infrastructure; provide education and outreach; and comply with state mandates relating to solid waste service.

The City met with Burrtec to negotiate solid waste service rates to implement the SB 1383 Regulations. Per Section 21.1.3(c) of the franchise agreement, for adjustments due to a change in law, Burrtec may adjust the Maximum Permitted Service Rates by an amount equal to the increase in costs. Burrtec has provided multiple rate options, and three different options are described below. The first two options continue to cap annual rate increases at 5% but allow Burrtec to recover disposal and processing costs for organic waste because the change in law, or the SB 1383 Regulations, primarily affect organic waste. The third option allows Burrtec to recover processing and disposal costs for all material types (trash, recyclables, and organic waste) with a customer credit for trash, green waste, and recycling. Option 1 does not include a term

extension, while Options 2 and 3 include a 5-year term extension.

The City Council will need to determine which Option or rate structure best suits the public to implement the additional charges:

- Option 1 - would apply SB 1383 compliance fees beginning March 1, 2023. There will be an annual CPI rate adjustment with a 5% cap on the overall rate, except for organic waste processing and disposal components related to SB 1383 change in law requirements which will be passed through and charged at full rate without being subject to the cap. There is no term extension under this Option 1; the term would expire on March 31, 2026.
- Option 2 - would phase in the SB 1383 rate increases beginning fiscal year 2023-2024 (with no change in 2022-2023) and extend the term by 5 years to March 31, 2031. There will be an annual CPI rate adjustment with a 5% cap on the overall rate, except for organic waste processing and disposal components related to SB 1383 change in law requirements, which will be passed through and charged at full rate without being subject to the cap.
- Option 3 - would phase in the SB 1383 rate increase beginning fiscal year 2023-2024 (with no change in 2022-2023) and extend the term by 5 years to March 31, 2031. There will be an annual CPI rate adjustment with a 5% cap on the service component only. Current disposal and processing fees for all material types (trash, recyclables, and organic waste) will be passed through and charged at full rate without being subject to the cap.

Table 1: Option Comparisons of Residential Rate Estimates for 5 years Proposed Rate Schedule

	2022	2023	2024	2025	2026	2027
Option 1	\$36.87	\$37.97	\$39.97	\$41.99	\$44.09	\$46.29
Option 2	\$26.42	\$37.97	\$39.97	\$41.99	\$44.09	\$46.29
Option 3	\$26.42	\$34.94	\$37.44	\$39.72	\$42.08	\$44.56

After review of all three Options, staff recommends Option 2 for the City of San Bernardino residents. Option 2 defers the rate increase for one year and extends the term by 5 years. Staff is content with the level of service Burrtec provides and rarely receives solid waste service complaints. Burrtec provides good community service level as it relates to solid waste collection, and staff supports continuing to work with Burrtec for an additional 5 years.

Option 1 did not consider a 5-year term extension and includes a rate increase for 2022, which Options 2 and 3 do not.

While the estimated rates for Option 3 are lower than Option 2, Option 2 has the

guaranteed 5% rate adjustment cap on the overall rate, except for organic waste processing and disposal costs related to SB 1383 that will be passed through. On the other hand, Option 3 allows Burrtec to pass through all processing and disposal costs for trash, recyclables, and organic waste to be passed through to customers. Even with a customer credit, Option 3 has too many variables that are subject to change and has greater potential to result in an increase to rates.

Staff also compared the rate trends of Option 2 and Option 3 for the 5-year extension period utilizing the formulas provided by Burrtec. By year 2028, the rates under Option 3 almost catches up to the rates under Option 2 worst case estimate (Figure 1). The estimated calculations assume a 5% estimated CPI under a scenario with the highest inflation, although over the years, the CPI has not exceeded 4%. Over the last four years, the CPI was as follows: 2019 - 3.80%, 2020 - 3.07%, 2021 -1.63%, 2022, 3.83%). If CPI follows the trend of increasing about 3% annually, the rates under Option 2 can potentially be lower than Option 3 because Option 3 allows pass through of all processing and disposal costs, and in this scenario, the rate and would be more dependent on the disposal and processing fees that change.

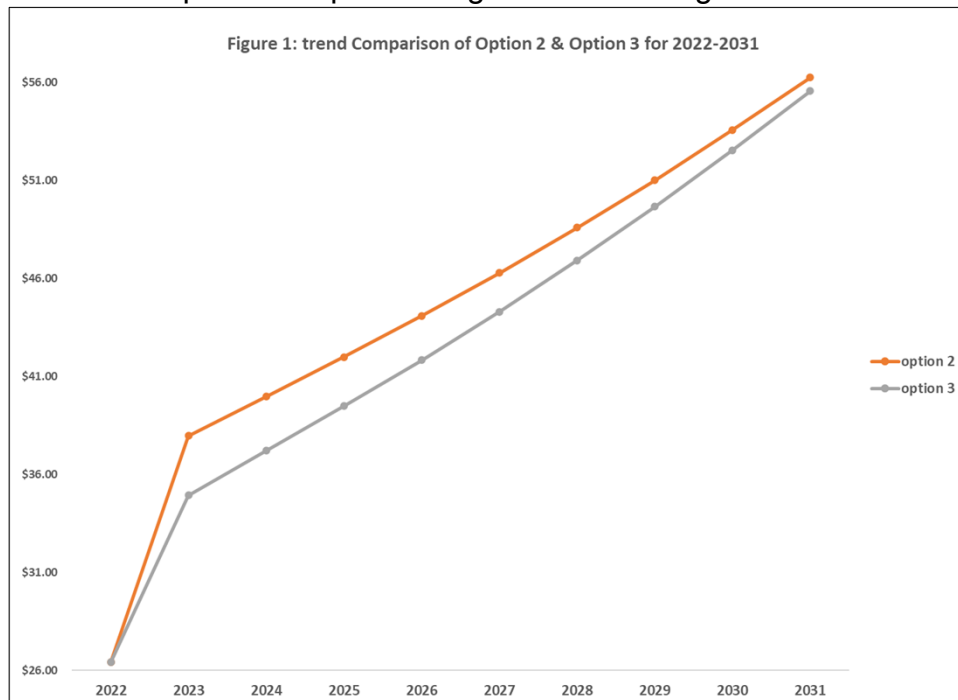


Figure 1: Trend Comparison of Option 2 & Option 3 for 2022-2031: Year 2023 is showing 8% increase on the overall residential rate from year 2022, with CPI and SB 1383 implementation fees added in. Year 2024 depicts a 6% increase in the rate. Years 2025-2031 show a 5% increase estimate on rates to depict a scenario with the highest inflation.

If approved by the City Council, Attachment 3, Proposed Rate Schedule Sample for Option 2 will be mailed as part of the Prop 218 process. However, if a different option is selected, staff will work with Burrtec to create the appropriate rate schedule to include in the Prop. 218 Notice.

Next Steps

Staff seeks City Council direction on its preferred Option finalize the Proposition 218 notice (a draft which is attached) to property owners and tenants directly responsible for the solid waste bill. Staff will then mail out the notice by December 30, 2022, which is at least 45 days before the February 15, 2023, public hearing on the rate increases. The amendment to the franchise agreement for the new SB 1383 services will also be considered at the February 15, 2023 City Council meeting. If the City Council approves the solid waste rate increases at the February 15, 2023 Council meeting, the rates will take effect on March 1, 2023.

2021-2025 Strategic Targets and Goals

The Notice of Intent to declare a public hearing to consider adjusting the Maximum Permitted Services Rates meets Key Target No. 3c improved quality of life by evaluating and enhancing the quality of public safety services and Key Target No. 3d to improve the City's appearance, cleanliness, and attractiveness.

Fiscal Impact

There is no fiscal impact to the General Fund associated with authorizing staff to mail the Prop 218 Notice.

Conclusion

Provide staff direction on its preferred rate structure option (from among Options 1, 2, and 3) in order for staff to finalize and mail the Proposition 218 notice for solid waste service rate increases.

Adopt Resolution No. 2022-244 of the Mayor and City Council of the City of San Bernardino, California, declaring its intention to conduct a Public Hearing on February 15, 2023, to consider adjusting the Maximum Permitted Service Rates for Integrated Solid Waste Collection, Processing and Disposal Services.

Attachments

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| Attachment 1 | Resolution No. 2022-244 Declaring its Intention to conduct a Public Hearing to consider adjusting the Maximum Permitted Service Rates for Integrated Solid Waste Collection, Processing and Disposal Services |
| Attachment 2 | Proposition 218 Public Hearing Notice |
| Attachment 3 | Proposed Rate Schedule Sample (Option 2) |

Ward:

All Wards

Synopsis of Previous Council Actions:

January 25, 2016	Resolution of the Mayor and City Council of City of San Bernardino approving a ten-year Exclusive Franchise Agreement for Integrated Solid Waste Collection, Professing, and Disposal Services with Burrtec Waste Industries, Inc. .
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- January 3, 2018 Resolution of the Mayor and City Council of the City of San Bernardino, California, setting a public hearing for 5:00 PM February 21, 2018, or once noticing requirement are determined to be satisfied by the City Manager, to consider adjustments to the Maximum Permitted Solid Waste Service Rates.
- March 21, 2018 Public Hearing pursuant to Proposition 218 and Resolution of the Mayor and City Council of the City of San Bernardino, California, declaring the results of the Proposition 218 protest count for the proposed adjustments to the Maximum Permitted Solid Waste Service Rates.