



TO: Mayor and Members of City Council

FROM: Mark Casey, City Manager

DATE: July 8, 2014

RE: Organized Collection of Solid Waste (Minn. Stat. § 115A.94):
City Staff Analysis of June 30, 2014 Proposal

On June 29, 2014, the City of Saint Anthony Village (the "City"), under the authority of Minn. Stat. § 115A.94 ("Organized Collection Statute" or "Statute"), completed its 60-day negotiation period with the City's currently licensed collectors of solid waste—Allied Waste Services of North America, LLC dba Allied Waste Services of the Twin Cities – Eden Prairie // Republic Services of the Twin Cities – Eden Prairie; Walters Recycling and Refuse, Inc.; and Waste Management of Minnesota, Inc. (collectively, "Haulers"). The Council received the Haulers' proposal ("Proposal") and accompanying draft agreement ("Draft Agreement") at its June 30, 2014 meeting, along with a memorandum by City Staff detailing the background and process concerning the negotiation period and the Statute ("June 30 Memo").

This memorandum is an update to the June 30 Memo and analyzes the Proposal in accord with the City's identified priorities ("Priorities") and the Statute itself to assist the Council in making its decision.

I. RECOMMENDATION

City Staff recommends that the City Council review the Proposal, Draft Agreement, June 30 Memo, and City Staff analysis, and subsequently undertake one of the following four options:

- 1) Set date for public hearing to take action on the Proposal and Draft Agreement as is.
- 2) Direct City Staff to continue exclusive negotiations with Haulers to address particular concerns with the Proposal and/or Draft Agreement.
- 3) Reject Proposal and contract as is, and direct City Staff to create a resolution appointing an Organized Collection Options Committee pursuant to the Statute.
- 4) Reject Proposal and terminate further organized collection efforts at this time.

II. ANALYSIS

A. *Benefits of Organized Collection*

The City is generally aware of the benefits of organized collection and has explored the issue for some time, as discussed in the June 30 Memo. These benefits were validated, and a number of other benefits became apparent, during the course of the 60-day negotiation period.

The Organized Collection Statute is a consumer-driven statute. The 60-day negotiation period required by the Statute authorizes cities to negotiate with their licensed collectors of solid waste to adopt practices that are in the best interests of individual city residents and the city as a whole. It is well-established and well-documented that rates charged for the collection of solid waste and related services in an “open hauling system,” such as is the case for the City currently, can vary from customer to customer. Moreover, licensed collectors have the ability to raise rates over time and impose additional fees and surcharges beyond the base price for services. Within an open hauling system, individual customers will likely have a difficult time negotiating with their service provider because customers acting alone do not possess the bargaining power that the City has, especially as authorized by the Statute. Moreover, many individual customers likely do not have the time and energy to perform such negotiations, or perhaps even the knowledge that the opportunity exists (assuming the opportunity actually does). The Organized Collection Statute empowers a city and its licensed collectors to come to the table and create a plan that not only addresses a city’s identified priorities, but also helps ensure equitable and competitive pricing, adequate delivery of service, accountability, and general consumer protection.

More generally, organized collection allows cities and their licensed collectors to work together to accomplish priorities that are directly aligned with the best interests of a city’s residents and a city as a whole. City Staff continues to agree that organized collection provides a positive opportunity for the City to work in harmony with its Haulers to fulfill objectives in a number of important areas.

B. *City Priorities*

A primary goal of the Proposal, as required by the Statute, is to include identified City priorities. The City provided a list of 16 Priorities to the Haulers at the start of the 60-day negotiation period, and the Haulers were asked to devise a proposal that meets each of these. The Priorities reflect long-standing City objectives and encompass a variety of areas of concern. Any one Priority is not intended to have weight over another, although as a practical matter, individual residents may have stronger interests in certain Priorities.

The City additionally provided draft specifications to the Haulers at the time it distributed the Priorities. The draft specifications themselves addressed the Priorities to a certain degree, although some specifications were revised or deleted from the final Draft Agreement submitted on June 30. The Haulers specifically requested deletion of provisions concerning services provided for city-owned buildings and special events. The Haulers stated that these items were too difficult practically to work under a consortium system and were better suited for a competitive procurement process.

The Haulers did not add anything new to the specifications in comparison to what the City initially provided, other than adding provisions detailing responsibilities associated with billing, and making minor clarifications to service methods. The Haulers’ revisions to the

specifications were helpful in the sense that they provided what appears to be a practical scope of services in accordance with actual operations. In other words, City Staff believes that what has resulted from the 60-day negotiation process is a Proposal and Draft Agreement that attempts, through good faith negotiation, to balance the interests of the City and the Haulers.

As stated on page 3 of the Proposal, the Haulers believe that their Proposal meets 14 of the 16 Priorities. Several of these Priorities are inherently met through the organized collection process itself, including Priorities such as assuring all residents have adequate trash and recycling services (#2), improving hauler reporting systems (#5), and reducing road wear impacts (#16). Likewise, the Proposal meets Priority #12 (Minimize Disruption to Residents) through the Statute's requirement that the Proposal reflect the Haulers' existing market share, and through the general spirit of good faith within the 60-day negotiation period. The negotiations resulted in resident-focused provisions in the Draft Agreement that meet Priority #12, as well as practical considerations that meet Priority #13 (Minimize Impacts on Licensed Solid Waste Collectors).

City Staff has chosen to comment more specifically on certain other Priorities. In particular, City Staff believes that the Proposal meets Priorities related to public education and safety particularly well, but does not meet Priorities related to value and administrative efficiency as sufficiently. An analysis of selected Priorities in conjunction with the Proposal follows:

Priority #4: Enhance Public Education and Awareness

- Haulers state that they will meet this Priority because they will provide an education packet to increase awareness on recyclables, generally collaborate with the City on a coordinated public education campaign, and assist the City in developing and providing educational materials to the public.
- Analysis
 - The City believes public education is an essential strategy to achieve waste reduction and recycling. The Haulers' Proposal and Draft Agreement state that the Haulers will cooperate with the City in a variety of public education efforts. With respect to public education, the Proposal and Draft Agreement reflect a collaborative effort between the Haulers and the City, which appears to meet the goals of organized collection overall, but may add administrative costs to the City. Overall, the Proposal meets this Priority.

Priority #6: Improve Recycling, Composting and Waste Reduction

- Haulers state that they will meet this Priority through their cooperation with public education efforts (see discussion above) and by promoting and adding compost and organics.
- Analysis
 - The Proposal noticeably highlights recycling and sustainability efforts. In particular, the Proposal offers a detailed "Organic Waste Collection Plan," which purports to align with the state mandate for organics recycling by 2016. The Haulers offer to submit an organic waste collection plan by the

end of 2015. Although City Staff supports this goal in general, City Staff understands that the Haulers intend organic waste collection to be an added cost to the proposed price in the Proposal. It is therefore unclear what efforts in the areas of recycling, composting, and waste reduction are being *improved*, as the Priority requires, without added cost.

Priority #7: Improve Safety

- Haulers include a detailed “Safety Plan,” which focuses solely on driver qualifications and training. The Haulers also state that reducing truck traffic on the streets will increase safety.
- Analysis
 - The “safety” Priority encompasses, among other things, safe driving of large trucks in residential neighborhoods, as well as the amount of truck miles driven in the City. City Staff agrees with the Haulers that the Proposal’s zone-based system will naturally improve safety, as well as reduce road wear impacts (Priority #16). The Haulers appear to have well-established safety procedures for their drivers, and City Staff believes the Proposal and Draft Agreement meet this Priority.

Priority #8: Improve Standardization of Service Options

- Haulers state that uniform services and pricing will ensure all residents are able to get the same service offerings.
- Analysis
 - City Staff agrees that uniform services and pricing, which are positive attributes, naturally arise from an organized collection system. The Priority, however, spans beyond this aspect of standardization and additionally strives for service *options* that best fit individual household needs. The Proposal does include several service options, including varying trash service levels, yard waste, walk-up service, and bulky item collection. Yard waste and bulky item collection, however, are additional costs beyond the Proposal’s quoted base price. One somewhat perplexing choice by the Haulers is to charge residents the same price for small trash cart (every other week) service and small trash cart (weekly) service. City Staff understands that typically other cities have a significant price discount for the bi-weekly service compared with the weekly service. The fact that these two options have the same price effectively eliminates the option to choose bi-weekly service, because a customer would likely just take the larger (small) cart at the same price.

Priority #9: Improve Value of Services

- Haulers state that most residents should see a decrease in price, while receiving an increase in the standard of service. Haulers have imposed a longer-term contract to ensure beneficial price scenarios.

- Analysis
 - To properly and adequately assess issues of value and price, the City engaged a reputable consultant, Foth Infrastructure & Environment, LLC, (“Foth”) to compare the Proposal’s prices with the current prices paid by City residents, as well to compare the value of services with other cities in the Twin Cities Metro Area that have moved from an open hauling system to a contract system. Attached to this Memorandum is a July 1, 2014 memorandum submitted by Foth providing these comparisons (“Foth Memo”). City Staff reiterates that “value” reflects merely one of the Priorities that the Council should consider. The increased amount of analysis devoted to this issue, in comparison to other Priorities, is a result of the inherent difficulty in performing truly accurate price comparisons in general and the City’s lack of easy access to information regarding other cities’ prices. City Staff encourages the Council to review and consider the Foth Memo, with the understanding that “city to city comparisons are an imperfect art” (Foth Memo, p. 7). With all of this in mind, City Staff reinforces the following points:
 - City Staff does believe that many residents’ bills will see a decrease from current rates, although it is difficult to determine exactly how much of a decrease because of the variance in customer rates in the current open hauling system and the unclear base price standards from which to determine any savings (Foth Memo, pp. 5-7).
 - The Haulers have used as a standard their purported “current market price” (Foth Memo, p. 6). The Haulers represented to City Staff that this is derived from an average price currently charged to customers, among all three haulers, factoring in market share. The actual source of, or support for, this data was not provided to City Staff.
 - The “current market price” conflicts with the rates represented to the City in the Haulers’ respective Garbage Hauler/Recycling license application forms (Foth Memo, pp. 1-3, 5-7). City Staff believes it is justified, however, to use as a standard of comparison these reported numbers because they reflect total rates charged (e.g., prices added to collector-imposed surcharges) as required by City Code § 111.216(D), and no further indication of a rate change has been submitted to the City.
 - *City Code § 111.216(D): When the application is submitted, the applicant must file with the City Manager a schedule of proposed rates to be charged during the licensed period. Every licensee must provide 14-days’ prior written notification to the city and the licensee’s customers of any change in rates to be implemented during the licensed period.*

- In comparing the Haulers' proposed prices with the Haulers' reported prices on their license application forms, it appears that there is a decrease in price for small (-7%) and medium (-4%) service levels, and an increase in price (+3%) for the large service level (Foth Memo, pp. 5-6, Table 2).
- The Proposal eliminates the Haulers' ability to compound additional fees, such as administrative fees, environmental fees, and fuel surcharges. In other words, under the current open hauling system, residents must pay not only the base price for services, but also a Hauler-imposed fee of varying amounts—both of which are taxed. The elimination of these fees should result in a noticeable decrease in residents' total bills.
- The City will incur a number of additional administrative costs as a result of the Proposal and Draft Agreement (Foth Memo, pp. 4-5). The City will likely have to pass through these costs to residents as an addition to their bills, although they should remain relatively low, especially in comparison to prior Hauler-imposed fees. The Foth Memo provides "very rough, preliminary estimates" that these pass through amounts will be approximately \$1.74 per household served per month.
- The Foth Memo estimates that the prices under the Proposal are considerably higher than the prices in other cities that have established a contract (opposed to open hauling) system (Foth Memo, pp. 7-8).

Priority #11: Lessen Environmental Impacts

- Haulers state that the use of clean-burning compressed natural gas and biofuel trucks, along with the zone-oriented collection system, will result in positive impacts to the environment.
- Analysis
 - City Staff believes the Proposal meets the City's sustainability and environmental-oriented goals particularly well. Moreover, the Proposal suggests that the Haulers will continue to work with the City on improving their efforts in these areas.

Priority #14: Optimize Administrative Efficiency

- Haulers state that they have not met this Priority in their Proposal and believe these are efforts the City will need to focus on. The Haulers, however, are ready to assist the City in any way they can.
- Analysis

City Staff agrees that administrative efficiency (as well as Allocating Adequate Staff Resources (#1)) are Priorities that are more City-focused.

City Staff also agrees with the Haulers that they did not meet this Priority. Conversely, the addition of a number of City duties in the Proposal as discussed above creates challenges to administrative efficiency and adds costs to both the City and its residents. Nevertheless, as a whole, the Proposal and Draft Agreement attempt to find an ongoing collaborative balance, in light of the changes inherent to organized collection and the City's desire to manage billing.

C. Statutory Criteria

Throughout the City's exploration of organized collection, including within the 60-day negotiation period and in the creation of the Proposal and Draft Agreement, the City has intended to follow the requirements of the Organized Collection Statute. With respect to the Proposal, the Statute requires the following:

- ✓ The proposal must include identified city priorities.
- ✓ The proposal must reflect existing haulers maintaining their respective market share of business.
- ✓ The initial organized collection agreement must be for a period of three to seven years.

Requirement #1 (city priorities): City Priorities were discussed in Section II(B) of this Memorandum.

Requirement #2 (market share): The Haulers collaborated with each other to determine market share and have represented to City Staff and in the Draft Agreement that the zoned collection routes reflect the Haulers' current market share as required by the Statute.

Requirement #3 (term): Pursuant to the Proposal and Section 10 of the Draft Agreement, the Haulers have proposed a six-year initial term, with three additional, optional one-year extensions. Solely with respect to the Statute's requirements, City Staff believes this arrangement is appropriate. Of course, the Council should assess whether this term is appropriate overall.

D. Other Considerations

Term of Agreement. As stated above, the Proposal and Draft Agreement call for a six-year initial term, with three additional, optional one-year extensions. The Haulers state that this arrangement is "consistent with other Municipal contracts [they] have worked on" and that "a slightly longer contract" is necessary "in order to develop a price scenario that truly benefits the residents of the City." The Council should consider the Foth Memo and City Staff analysis to determine whether the proposed prices are, in fact, truly beneficial to the City and its residents. The Council should also consider the implications of a longer contract term and whether the Council desires to bind future Councils to the contract.

Sincerely,

Mark Casey
City Manager

CC: Kurt Whitman, City Attorney
Jay Lindgren, City Attorney