




TOWN OF FAIRFAX

STAFF REPORT

January 15, 2020

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 

SUBJECT: Adopt Resolution establishing maximum rates collected by Marin Sanitary Service for Solid Waste Services, to be effective January 1, 2020, and Approving a Second Amendment to the Contract Between the Town of Fairfax and Marin Sanitary Service

This item was continued from the December 4, 2019 Meeting. Please note then-Vice Mayor Goddard is now Mayor and Peter Lacques is no longer on the Council.

RECOMMENDATION

- 1) Conduct public hearing
- 2) Adopt Resolution establishing maximum rates collected by Marin Sanitary Service for Solid Waste Services, to be effective January 1, 2020, and Approving a Second Amendment to the Contract Between the Town of Fairfax and Marin Sanitary Service

BACKGROUND

Marin Sanitary Service (MSS) provides residential, commercial and multi-family solid waste services, including garbage, recycling and organics collection and processing. MSS also provides garbage, recycling and organics pick-up for Town of Fairfax (Town) facilities, parks, and sidewalk receptacles downtown and throughout Fairfax. Each year, the Town Council holds a public hearing to set the maximum collection rates that can be charged by MSS in Fairfax.

MSS submitted its application for rates to be effective January 1, 2020, in Fairfax. In its submittal, MSS presented two versions of its application: 1) a 4.94% increase prepared in accordance with the Marin Franchisor's Group (MFG) Exhibit B Rate Setting Methodology, and 2) a 6.38% increase prepared using the current rate-setting methodology set by MSS' contract with the Town Exhibit B. Both versions were prepared using an Indexed Rate Year approach. The MFG methodology uses one index (Water and Sewer and Trash Collection, or WST) to adjust the majority of operating costs, while the Town's current methodology uses five indices to adjust various expense categories in addition to projecting depreciation and interest expense.

The MFG methodology was developed to streamline and simplify the overall rate setting process. It is currently under consideration by the Town of San Anselmo, and has been adopted by all MFG members: San Rafael, Larkspur, Ross, the Las Gallinas Valley Sanitary District, and the County of Marin, including within the Ross Valley Sanitary District boundaries.

The current contract with MSS was signed in 2011 for a ten year term, and amended in 2016 to modify Exhibit A Description of Services in order to better serve the residents of Fairfax. The contract is set to expire on December 1, 2021. Per Section 2 Term, Fairfax and MSS shall enter into discussions concerning extension of the contract, prior to the expiration of the initial term, to negotiate in good faith to determine whether to extend.

DISCUSSION

At the April 2019 meeting to consider the 2019 MSS rate request, the Council subcommittee consisting of Vice-Mayor Goddard and Councilmember Lacques indicated they would be reviewing the proposed MFG methodology and report back to the Council with its recommendations at a future meeting. *Given the MSS request to the Town to consider a new rate-setting methodology, staff and the Council subcommittee thought it would be more prudent to consider the MSS request within the broader context of discussions to extend the contract.*

Staff has been working with R3 Consulting Group (R3), the same firm that conducted the review of the last MSS rate application, to assist with negotiations and discussions regarding the MSS rate application and other contract updates, including the evaluation of the MFG methodology and contract extension. Staff and R3 received policy guidance and direction from the Council subcommittee. R3 served in a similar role with the Marin Franchisor's Group (MFG).

The following summarizes the recommendations from the Council subcommittee and staff:

1. Extend Contract for 10 Years

The proposed second amendment would extend the contract term for an additional 10 years. The new expiration date would become November 30, 2031, allowing for the continued provision of high quality solid waste services (with some updates for clarity and to address industry shifts, detailed below). A 10 year term is also beneficial as it allows MSS to purchase and replace equipment as needed to serve Fairfax under more favorable financial terms, which are shared in by the Town's rate payers. At its option, the Town may offer two (2) additional extension terms of five (5) years each. MSS has indicated it would like to continue its discussions regarding the merits of the Town considering an evergreen contract in the future. Staff indicated we are willing to continue the discussion for future consideration.

2. Adopt New Methodology for Setting Rates

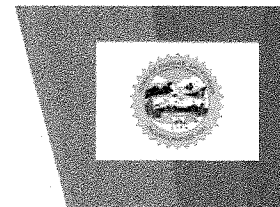
The proposed second amendment includes a streamlined and simplified annual rate adjustment methodology. Unlike the current methodology, which sets rates based on actual MSS costs and profits (aka a "cost-plus contract") the new methodology would set rates based on set revenues due to MSS, which would be escalated annually based on one simple Water, Sewer, and Trash (WST) index, which has increased between 2 to 5% annually in recent years.

This will streamline and simplify the rate setting process, placing more incentive on MSS to live within the regulated revenue amount, and will significantly reduce annual costs and time for consultants and staff to conduct the annual reviews. Every 5 years MSS or the Town may request a detailed review should there be a need. This differs from the current Agreement, which stipulates an automatic detailed review every 3rd year. All true-up provisions of the old

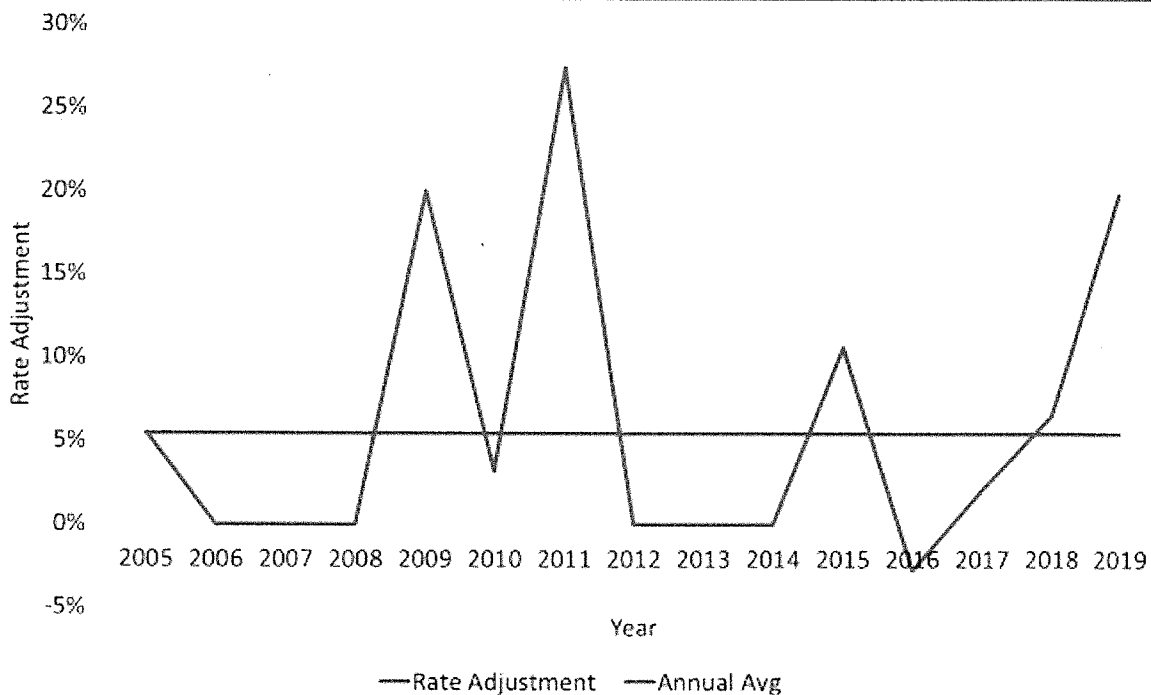
methodology would also be removed. Staff expects a 70-80% reduction in time and costs annually to prepare the rate review. Should Fairfax not adopt the new methodology, the current methodology would remain in effect with greater cost and time burden to be carried by the Town and rate payers.

Specifically, MSS proposes a 4.94% increase prepared in accordance with the new rate-setting methodology in Exhibit B to the proposed Second Amendment to the agreement with MSS. Under the current methodology, MSS proposes a 6.38% increase. We are recommending the Town adopt this new methodology as part of the 2020 rate setting process for a 4.94% rate increase effective January 1, 2020.

In addition to the streamlining stated above, the proposed second amendment would include a 2.5% minimum and a 5% maximum rate cap for MSS' operational expenses. This excludes franchise/agency fees and the cost of processing, recycling, composting and disposal (the latter of which are not subject to MSS control but are subject to fluctuation based on market conditions and amounts of waste generated by residents and businesses). This will not eliminate the possibility of experiencing an overall rate increase greater than 5% on occasion, but generally should curtail the likelihood of large future year rate increases. The graph below shows large fluctuations in rate increases since 2011 with a low of approximately -2.8% in 2016 and a high of 19.8% in 2019.



Fairfax Rates Over Time



Since 2012, under the current agreement, the average annual increase was approximately 4.9%.

As part of the analysis, R3 conducted a thorough review of MSS' expenses and revenues. This was important to do concurrently with the new amendment to the Franchise Agreement in order to have 3rd party verified figures for a better understanding of the projected costs and revenues for future years using a new methodology. Under the new methodology, and barring any significant upsets in the industry, R3 believes rates are more likely to adjust by approximately 3-4% annually. This new proposed rate setting methodology would require MSS to manage all of their controllable expenses to the greatest extent possible while also providing greater rate certainty with which to do so.

To further simplify the rate setting process, the contract will no longer require a newspaper notice for rate hearings. The rate hearing notice will follow the regular public hearing noticing requirements.

3. Establish New Performance Metrics

MSS agreed to establish new performance metrics for outreach and education as well as regular operations, billing, and customer service. Details of the specific performance metrics and MSS reporting procedures will be established collaboratively between the Town and MSS. However, there is now a provision for conducting formal performance reviews (at the direction of the Franchisors Group, which, assuming the new rate setting methodology is adopted, Fairfax could participate in going forward). MSS is known for quality services, a dedication to recycling and composting, and environmental stewardship. This allows for quantifying and analyzing where there is real impact and where there is room for improvement going forward.

4. Provide for Succession Planning & Assignment

Although MSS has stated they are not selling nor are they interested in selling the company, they agreed to prepare formal succession planning documentation to be provided in the coming year, and regularly thereafter. They have also developed and provided new assignment language for the Franchise Agreement that would give the Town more control over any proposed sale of the company. MSS will now provide up to \$200,000 for the Town and MFG, collectively, to review and analyze the assignment if the MSS were to sell in the future, while ensuring that the MSS standards of service continue to be met.

5. Confirm Vegetation Management Fee

The Brush Clearing/Fuel Reduction Fee has been renamed as the Vegetation Management Fee to better describe its purpose and allow for greater discretion over funds for fire prevention. The amount of the fee would remain the same (\$10,000 year), however could be adjusted at a future date if the Town's needs change. MSS will also provide additional debris boxes for the Chipper Day events.

6. Add Zero Waste Events Fee

MSS shall pay to Fairfax a Zero Waste Event Fee of \$10,000 per year. The purpose of the fee is to compensate the Town in lieu of additional zero waste event services previously provided by MSS (see Section 9 below for more details). The Town could use a portion of these funds to pay for Conservation Corp. North Bay to sort garbage/recycling at the Fairfax Festival.

7. Revise to Reflect State Regulatory Compliance

The partnership between the Town and MSS to comply with new state regulations is to be recognized and reaffirmed through the proposed second amendment. In particular, MSS shall continue to provide the Town with outreach, education, technical assistance, monitoring and compliance services to residents, multi-family dwellings and commercial businesses. The Town and MSS intend for these services to: provide information to customers regarding the services offered by MSS as provided for via the contract; encourage, incentivize and maximize participation in recycling and organics collection programs, and; implement the requirements of state laws AB 341, AB 1826, SB 1383, and any other solid waste, recycling and organics state law requirements applicable to Town and/or MSS.

8. Revise Residential Organics Collection

The current contract allows for the curbside set out of up to five additional 32 gallon customer provided containers as part of regular organics collection service. This practice has proven problematic due to increased worker injury and variability in set outs leading to greater routing inefficiency and cost. Additionally, MSS equipment is not compatible with customer owned containers and in result these containers can end up broken on the tipper arm or lost in the hopper of the truck.

In alternative, the proposed second amendment outlines a transition to MSS provided tipper carts. Beginning January 1, 2020, MSS may provide each residential customer with up two organics collection carts (the second cart to be provided upon customer request) at no additional cost. Up to four additional carts beyond those provided at no additional cost can be requested for a nominal fee. Only MSS provided tipper carts will be allowed for the weekly collection of organic waste. Residents may request, free of charge, MSS to collect their existing user-owned containers for recycling.

9. Revise and Clarify Municipal Services

- Events: revision to MSS services to better fit the Town's event needs, including the Fairfax Festival and an MSS staffed educational both at select Town events. In lieu of solid waste service at a second Town event, MSS will pay a Zero Waste Events Fee (described in Section 6 above). In addition, management of the portable toilets service for the Fairfax Festival will transition to the Town over the next 1-2 years, with the cost of this service to be covered by a portion of the Zero Waste Events Fee.
- Public Containers: clarification regarding MSS servicing of public containers. MSS shall service Town-owned cans in public areas and parks based upon mutually agreed upon parameters by Town and MSS, up to 70 cubic yards per year.

- Corporation Yard: flexibility for right sizing service levels at the Town's Corporation Yard and other facilities based upon mutually agreed upon parameters by Town and MSS.

In conclusion, the Council subcommittee, staff, MSS, and R3 concur that this proposed second amendment to the contract would help achieve the following outcomes:

- Stable and predictable rates for the next 4 years, and a firm basis for rate control in future years,
- Continued verifiable high levels of quality services for the City's residents, businesses and institutions, and
- Simplified annual rate setting methodology that saves significantly on consultant costs and staff time to conduct while improving accuracy and transparency.

The second amendment is included as Attachment B. If approved, changes would go into effect for the rate setting process beginning this year and applicable to the 2020 rates.

R3 will make a presentation regarding these recommendations and their analysis at the Council meeting.

FISCAL IMPACT

Increasing MSS's rates will result in slight increases to the franchise fees paid by MSS to the Town. Approving these amendments will reduce the annual cost for consultants to review the rate applications each year. In addition, the financial intent of the new methodology is to provide for greater rate stability and predictability and to reduce the potential for large rate increases in the future.

ATTACHMENTS

- A. MSS Rate Application
- B. Resolution approving Second Amendment with:
 - Exhibit A: revised description of service
 - Exhibit B: revised methodology
 - Exhibit C: new rate schedule
- C. Current Franchise Agreement with MSS