

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng
Kerrie Romanow

**SUBJECT: WAGE STANDARDS FOR
RESIDENTIAL GARBAGE &
RECYCLING CONTRACTS**

DATE: November 27, 2017

Approved

D. D. SyL

Date

12/5/17

RECOMMENDATION

- (a) Accept staff report which provides information about labor standards applicable to residential garbage and recycling contracts.
- (b) Direct staff to return to the City Council with a recommendation for Modified Living Wages for Recycle Plus Facility Workers for future residential solid waste service contracts.

OUTCOME

Approval of the recommendation will respond to Council's direction for information regarding the City's current residential solid waste contracts and provide an approach to expand wage requirements in future contracts to Facility Workers.

BACKGROUND

At the August 22, 2017 Council meeting, staff was directed to return to Council with:

- An overview of all City residential solid waste services contracts and the labor standards included in those contracts;
- An analysis of whether there are any employees who perform work under the residential waste contracts who are not covered by City labor standards in those contracts;
- If there are employees under the residential waste contracts that are not covered by wage standards or by labor peace provisions, bring forward options to incorporate wage requirements into the City's residential solid waste services contracts to enable workers currently not included by the City's wage policies to be included, and receive Council direction as to whether staff should seek to insert those standards into the residential contracts as part of the current effort to negotiate contract extensions;

- A proposal to amend Council Policy 3-3 (Living Wage Policy) to require employees performing any work on the City's commercial and residential solid waste services contracts to be "Covered Employees" under the City's living wage requirements. The current covered employee standard, which holds that all employees who expend at least half of their time on work for the City are covered, would continue to apply for all contracts other than garbage contracts;
- Clarification that the Cooperative Agreement and Fourth Amendment to the Franchises Agreement with Allied Waste Services of North America, LLC does not create an exemption to Council Policy 3-3 for any current and future contracts;
- An opportunity for the Council to direct staff to require the City's current residential solid waste services contractors to submit Employee and Labor Relations Plans as part of the contract extension negotiations to ensure continued labor peace; and
- Residential solid waste services wage and benefit information from other local public agencies.

Residential Solid Waste Services Contractors and Current Wage Requirements

The Environmental Services Department (ESD) supports solid waste collection, processing and disposal for commercial, City facility and residential operations. ESD provides recycling and garbage services to more than 320,000 residential households from both single-family and multi-family dwellings through four contracted service providers. All four providers were obtained through competitive procurement processes: GreenTeam and GreenWaste in 2000, and Garden City Sanitation (GCS) and California Waste Solutions (CWS) in 2006. In 2010, all contracts were renegotiated and replaced with new contracts, and made coterminous to expire June 30, 2021. Table 1 lists key services under each contractor.

The residential solid waste services contracts include prevailing wage requirements for the classifications shown in Table 1. CWS, GCS and GreenTeam operate under collective bargaining agreements with Teamsters Local 350. The wages paid under these collective bargaining agreements are higher than the prevailing wages established by the Office of Equality Assurance (OEA). GreenWaste does not operate under a collective bargaining agreement and therefore is required to pay not less than the City's established prevailing wage rates. The Materials Recovery Facility (MRF) workers at CWS receive prevailing wage because Council directed OEA to perform a wage survey and extended prevailing wage requirements to CWS (as a subcontractor to the previous contractor, Norcal) as part of the 2002 Recycle Plus agreements.

Table 1. Residential Contractors Key Services and Wage Requirements

Contractor	Key Services	Classifications Subject to Prevailing Wage	Classifications <u>Not</u> Subject to City Wage Standard
CWS	Districts A & C Single-Family: ✓ Recycling Collection & Processing ✓ Large Item Collection ✓ Large Item Processing MRF serves San Jose exclusively.	✓ Recycle Driver MRF: ✓ Sorter ✓ Floor Sorter/Raker ✓ Spotter ✓ Buy Back Operator ✓ Mechanic ✓ Equipment Operator ✓ Baler Operator ✓ Scale Operator	✓ Customer Service Representatives ✓ Truck Mechanics
GreenWaste	Single-Family and Multi-Family Citywide: ✓ Yard Trimmings Collection & Processing ✓ Residential Street Sweeping ✓ Garbage Processing Regional MRF processes curbside recyclables from 39 jurisdictions, municipal solid waste from 15 jurisdictions, and yard waste from 11 jurisdictions.	✓ Yard Trimming Claw Driver ✓ Yard Trimming Collection Driver ✓ Street Sweeper	✓ Customer Service Representatives ✓ Truck Mechanics MRF: ✓ Sorter ✓ Floor Sorter/Raker ✓ Spotter ✓ Buy Back Operator ✓ Mechanic ✓ Equipment Operator ✓ Baler Operator ✓ Scale Operator
GreenTeam	District B Single-Family and Multi-Family Citywide: ✓ Recycling, Garbage & Large Item Collection ✓ Recycling and Large Item Processing No MRF -Subcontracts processing to GreenWaste effective March 2014.	✓ Garbage Driver ✓ Recycle Driver	✓ Customer Service Representatives ✓ Truck Mechanics
GCS	Districts A & C Single-Family: ✓ Garbage Collection No MRF	✓ Garbage Driver	✓ Customer Service Representatives ✓ Truck Mechanics

Living Wage

Under Council Policy 3-3 (Living Wage Policy), contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation and provide a minimum number of compensated days off to covered employees who work on these contracts.

“Living wages” means wages paid under a collective bargaining agreement between the contractor and a recognized union representing employees who perform services under the contract. If the wage rate in the collective bargaining agreement ever falls below the living wage rate set by the City, the required rate of pay would be the City’s living wage rate, unless the collective bargaining agreement supersedes the requirements of Council Policy 3-3. If there is no collective bargaining agreement, covered employees performing work identified by OEA must be paid no less than the living wage rate set by the City.

“Covered employees” are those who:

1. Do not provide volunteer services;
2. Expend at least half of his/her time on work for the City;
3. Is at least eighteen (18) years of age; and
4. Is not in training.

ANALYSIS

Modified Living Wage

Residential solid waste contractor employees (“Facility Workers”) who perform work at the contractors’ main facilities and are not required to receive the wages in alignment with the City’s living wage include:

1. MRF workers at the GreenWaste processing facility;
2. Customer service representatives (CSRs) under all four contractors; and
3. Mechanics under all four contractors.

Under the current Living Wage Policy, a living wage requirement would cause these employees to be paid the City’s living wage if workers spend at least 50 percent or more time on San José work. Council requested a proposal to amend Council Policy 3-3 that deviates from the 50 percent requirement and requires anyone touching San José residential material to be “covered” regardless of how much time they spend on it. At an operation dedicated exclusively to San José work, this could be easily applied. However, because the percentage of San José time fluctuates at a regional operation for various reasons (e.g. facility down time, new customers, pilot projects), and because ratepayers cannot subsidize workers who work on duties relating to other cities, a calculation is required to determine the adjusted wage standard for these Facility Workers.

To avoid San José ratepayers subsidizing Facility Workers who do not work on San José residential contracts, staff recommends establishing a formula for determining a set annual percentage of San José time for sorters, mechanics, and CSRs. The percentages of time would be used to determine the modified living wage standard for each classification. It is important to note, however, that this approach would not raise the Facility Workers' compensation to the full living wage. In order for the Facility Workers to achieve the full living wage for 100 percent of their time, a regional approach with the remaining jurisdictions utilizing the contractor's employees would be required.

Per City Council direction to ESD on March 28, 2017, ESD is negotiating with the residential solid waste contractors for new agreements that would replace the existing agreements. Staff will need to further refine the Facility Worker wage standard formula and methodology during the Recycle Plus contract negotiations, and bring forward the final terms as part of the Recycle Plus negotiations status report to the City Council anticipated in early 2018. Should negotiations prove ultimately unsuccessful, staff would return to the City Council with a proposed approach for including wage standards for Facility Workers in a Request for Proposals process for new services beginning July 1, 2021.

Should this Modified Living Wage approach be included in the newly negotiated contracts, it would not necessarily require a change to Council Policy 3-3. However, amending the Policy would be consistent with the proposed new contract terms. Staff could bring the amendment to the City Council at the same time as the Recycle Plus negotiations status report to the City Council, or shortly thereafter.

Based on initial discussions and information provided by the residential contractors, the cost impact of a modified living wage could be between \$2.0 and \$3.0 million or more annually, resulting in an estimated rate payer impact of two to three percent in the implementation year, exclusive of the annual contractor compensation adjustment costs required in the agreements. These cost estimates could change once a specific Modified Living Wage methodology is determined. Costs in the out years would need to be determined upon direction to further define the terms of the Modified Living Wage. It is also important to note that this cost estimate does not consider the potential cost impact of other terms for the new agreement.

Clarification that the Cooperative and Fourth Amendment to the Franchises Agreement with Allied Waste Services of North America, LLC does not create an Exemption to City Council Policy 3-3 for any Current and Future Contracts

The Cooperative and Fourth Amendment to the Franchises Agreement with Allied Waste Services of North America, LLC approved by the City Council on August 22, 2017, does not create an exemption to Council Policy 3-3 for any current and future contracts. The Cooperative and Fourth Amendment to the Franchises Agreement settled a dispute regarding the living wage requirements in the Commercial Solid Waste and Recyclables Collection Franchises Agreement.

Resubmission of Labor Peace Plans

The labor peace plans submitted by CWS, GCS, GreenTeam and GreenWaste as part of the Request for Proposals process related to the current agreements continue to be in full force and effect. CWS, GCS and GreenTeam operate under collective bargaining agreements with Teamsters Local 350. Per the Request for Proposals requirement, GreenWaste submitted a labor peace plan and it was accepted by the City.

Residential Solid Waste Services Wage Information

Council also requested residential solid waste services wage and benefit information from other local public agencies. ESD researched and obtained the residential MRF sorter wage information from the public agencies shown in Table 2. The findings generally indicate that the MRF sorters at these facilities are covered under collective bargaining agreements; however, this is not typically required per their contracts with the jurisdictions.

Aside from the Republic MRF in San José, staff identified one privately-owned regional MRF (ACI Aladdin St. MRF serving San Leandro, Alameda, and Livermore) that has a living wage requirement for MRF sorters. However, in this case, all three cities approved the wage standard for MRF workers.

Table 2. Local Jurisdiction Wages for MRF Sorters

City	Wage Standard for MRF Sorters	MRF Sorter Wage	In-House or Contracted
Current City of San Jose Living Wage Rate: \$20.57 w/health \$21.82 w/out health			
San José –Single-Family Districts A & C	Prevailing Wage, but CBA supersedes	\$22.72	Contracted to CWS
San Jose –Single-Family District B, Multi-Family Citywide	None	\$15.00	Subcontracted to GreenWaste Recovery
San Jose - Commercial	Wage set by cooperative agreement between City & Allied Waste/Republic Services	\$17.29	Contracted to Allied Waste/Republic Services
Sunnyvale, Palo Alto (garbage/yard waste), Mountain View	CBA	\$21.58*	Sunnyvale owns SMaRT MRF, operated by Bay Counties Waste Services
Fremont, Newark, Union City	CBA	\$19.48	Contracted to BLT MRF of Fremont
Milpitas	CBA	Not Provided	Contracted to Republic
San Leandro, Alameda, Livermore	Living Wage, but CBA supersedes	\$18.12	Contracted to ACI Aladdin St. MRF

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Table 2. Local Jurisdiction Wages for MRF Sorters (Continued)

City	Wage Standard for MRF Sorters	MRF Sorter Wage	In-House or Contracted
Palo Alto <i>Recyclables</i>	Set by GreenWaste of Palo Alto	\$15.00	Contracted to GreenWaste of Palo Alto, Charles St. MRF
ReThink Waste JPA <i>(Belmont, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, San Mateo, towns of Atherton and Hillsborough, San Mateo County, West Bay Sanitary District)</i>	CBA	Not Provided	Contracted to Shoreway Environmental Center

*Floor wage rate as of 1/1/15 per the Sunnyvale agreement with Bay Counties Waste Services.

EVALUATION AND FOLLOW-UP

Based on City Council direction, staff would return with proposed amendments to City Council policy and bring forward new contract costs as part of the Recycle Plus negotiations update.

POLICY ALTERNATIVES

Alternative: *Do not include living wage as part of the current residential negotiations.* Include living wage standards in a future procurement process should negotiations be unsuccessful.

Pros: CWS, GCS, GreenTeam, and GreenWaste drivers and CWS MRF workers would continue to be subject to prevailing wage requirements through the term of the current agreements expiring in June 2021. There would be no increased costs to ratepayers passed through until future contracts are in place.

Cons: Facility Workers would not be required to receive a City-specified modified living wage, but they would be required to receive the City's minimum wage.

Reason for not recommending: Defers implementation of living wages for Facility Workers until July 2021 or later.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 19, 2017, City Council Meeting.

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COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation/input associated with this action.

COST SUMMARY/IMPLICATIONS

Based on initial discussions and information provided by the residential contractors, the cost impact of a modified living wage could be between \$2.0 and \$3.0 million annually, resulting in a rate payer impact of approximately two to three percent in the implementation year. Updated cost information will be provided when staff returns to the City Council with a recommendation for Modified Living Wages for Recycle Plus Facility Workers for future residential solid waste service contracts.

CEQA

Not a Project, File PP10-068(b), Municipal Code or Policy Change.

/s/
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/s/
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