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## STAFF REPORT

**TO:** THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL  
**MEETING DATE:** FEBRUARY 3, 2025  
**FROM:** DEREK COLE, CITY ATTORNEY  
**SUBJECT:** PUBLIC HEARING TO CONSIDER INCREASE IN RATES FOR SOLID-WASTE SERVICE PROVIDED BY ACES WASTE SERVICES, INC.

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### RECOMMENDATION:

1. Conduct a public hearing to hear comments regarding the proposed rate increase for solid waste services.
2. Adopt Resolution 24-25-21 Approving (a) solid-waste rate adjustments pursuant to proposition 218, and (b) a contract amendment ACES confirming the sequence of potential rate increases.

### BACKGROUND:

Effective July 1, 2009, the City entered into an exclusive Franchise Agreement with ACES for collection of solid waste within City limits. The agreement requires ACES to collect all residential solid waste generated from within the City and to facilitate the City's compliance with AB 939 waste-diversion and reporting requirements. The original agreement granted an exclusive franchise for 5 years with an additional 5-year extension exercisable at ACES' sole discretion.

In 2015, the City Council and ACES entered into an amended Franchise Agreement. The amended agreement extended the term of the exclusive ACES franchise through December 31, 2024 and provided for an additional 10-year extension upon mutual agreement of the parties. Among other things, the amendment also identified the City's responsibilities under Proposition 218 and ACES' obligation to reimburse the City for those responsibilities and other administrative functions.

In 2023, the City Council entered into an amended and restated franchise agreement with ACES for a 10-year term beginning on July 1, 2023. The amended agreement made additional changes to agreement terms and conditions.

In 2024, ACES received a further rate increase through an inflator its agreement with the City provides. The inflator is known in the solid-waste industry as the “refuse rate index,” or “RRI.” The RRI is similar to a consumer price index, or “CPI,” but is geared specifically to the refuse industry. ACES obtained an increase of 7.83% in its rates across-the-board as an RRI adjustment for its rates.

Late last year, ACES also assigned its interests to Delta Container Corporation, a nationwide solid waste provider more commonly known as Republic. The Council approved this assignment in the fall.

Republic now proposes rate increases following a “detailed rate review” it performed late last year. This is a comprehensive review of rates that the franchisee conducts every four years.

Separately, the Office of the City Attorney proposes an adjustment to ACES’ franchise agreement to confirm the sequence of its rate increases. When the City last comprehensively reauthorized the ACES franchise agreement, its drafting did not account for the timing of the various rate reviews such that our city’s reviews would be on the same sequence as the County’s. That had long been the practice. This office has prepared a simple amendment to the Franchise Agreement to conform the review schedules for Republic with both agencies.

## **DISCUSSION:**

### *Applicability to Proposition 218*

Proposition 218, the “Right to Vote on Taxes Act,” was approved by California voters in November 1996. The initiative generally requires that all special assessments and “property related fees” be approved by local voters. However, whether the initiative applies to solid-waste fees collected by private franchisees, rather than public agencies, is the subject of debate.

After approving a solid-waste rate increase for ACES in 2011, the City became a party to litigation when it was sued by a private party who claimed this increase violated Proposition 218. To avoid unnecessary litigation expenses, the City chose not to contest this case, believing the Proposition 218 issue would be better left to other cities to litigate. The City has instead agreed to follow the Proposition 218 approval process for any solid-waste rate increases.

Under Proposition 218, solid waste charges are considered “property related fees” and are thus subject to the procedure set forth in California Constitution Article XIID, Section 6(a). This section provides that proposals concerning solid waste collection must be considered in a public hearing, known as a “majority protest hearing,” at which ratepayers may register their opposition to the proposed rate increase. Prior to this hearing, Proposition 218 requires that notice be mailed to all property owners and/or ratepayers at least 45 days in advance. If, following the hearing, a majority of the owners or ratepayers submit *written* protests to the proposed fee (i.e., there is a “majority protest”), the fee may not be approved. If there is no majority protest, approval of the fee is authorized.

### Notice of Majority Protest Hearing

Regarding the proposed rate adjustment, the City has complied with its obligation to mail notice of the February 20, 2024 protest hearing to all ACES ratepayers. Following a provision in the Proposition 218 implementation legislation, the City has mailed notice of the hearing to all ACES ratepayers. (Gov. Code, § 53755(a).

### **STAFF RECOMMENDATION:**

At the February 3, 2025 meeting, the Council should hold a public hearing to:

1. Consider whether a majority protest exists as to the above rate increases per Proposition 218. The City has sent hearing notices to the ratepayers for 1475 parcels within City limits. A majority protest would thus exist if 738 ratepayers submit *written* protests to the proposed rate increase. Only *one* written protest may be filed per parcel. (Gov. Code, § 53755(b).) If a majority protest is successful, the Council may not approve the proposed rate adjustments. Conversely, if no majority protest exists, the adjustments may be approved.
2. If no majority protest exists, consider whether to approve the requested rate increases. A proposed resolution is provided to the Council should it wish to authorize the rate adjustments.

### Hearing Process

Concerning the hearing on the ACES rate adjustments, the City attorney recommends the Council proceed as follows:

1. Call this item when it arises on the agenda. Note that the mailed and published notice indicate this will be a timed item that starts **no earlier than** 6:00 p.m.
2. Staff will make its presentation and the Council may ask Staff questions.
3. Open the public hearing and allow comment by all interested parties. A motion should be made to formally close the public hearing. Under Proposition 218, no protests may be counted once the public hearing has closed.
4. Following the conclusion of the public hearing, count all **written** protests received prior to the meeting or prior to close of the hearing. If the number of written objections to any fee increase does not exceed 738, find that a majority protest does not exist as to that increase. (In the event the 738 threshold is not reached, the City Attorney recommends that the Council deem all protests to be validly submitted rather than take the time necessary to verify that each protest meets Proposition 218 requirements.)

5. If more than 738 written protests are received as to the proposed adjustments, have the City Clerk verify each protest to ensure it is submitted by the ratepayer of record, contains the information required by Proposition 218, and that no more than one protest has been submitted per property. If following this verification process, there still are more than 738 written protests, the Council must find that a majority protest exists.
6. If no majority protest exists, the Council should consider the accompanying resolution approving the proposed rate adjustments.

### **Franchise Agreement Amendment**

The fee resolution also includes authority for the City Manager to execute an amendment with Republic to conform the city's rate increase schedule with the County's. Calendar year 2025 will be set as a "Rate Year 1" under this Amendment. For this through Rate Year 3, Republic would be entitled to "refuse rate index," or "RRI adjustments." The next detailed rate review would occur in 2028, starting the sequence over again beginning January 1, 2029.