



Legislation Details (With Text)

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**Title:** Actions pertaining to processing of Co-mingled Recyclables (Citywide):  
1. Adopt a finding pursuant to CEQA Guideline 15061(b)(3) of No Possibility these actions may have a significant effect on the environment.  
2. Award a ten year agreement to Mid Valley Recycling, LLC (Mid Valley), to process 50 percent of the City's Co-mingled Recyclables (recyclables) at an indexed rate paid per ton to the City.  
3. Award a ten year agreement to Cedar Avenue Recycling and Transfer Station, LP (CARTS), to process 50 percent of the City's recyclables at an indexed rate paid per ton to the City.

**Sponsors:** Steve Brandau

**Indexes:**

**Code sections:**

**Attachments:** 1. Mid Valley Agreement.pdf, 2. CARTS Agreement.pdf, 3. Supplement - Memo from City Manager and Director of Public Utilities.pdf

Date	Ver.	Action By	Action	Result
2/25/2016	1	City Council	approved	Pass

**REPORT TO THE CITY COUNCIL**

**February 25, 2016**

**FROM:** DOUG SLOAN, City Attorney  
Office of the City Attorney

**SUBJECT**

Actions pertaining to processing of Co-mingled Recyclables (Citywide):

1. Adopt a finding pursuant to CEQA Guideline 15061(b)(3) of No Possibility these actions may have a significant effect on the environment.
2. Award a ten year agreement to Mid Valley Recycling, LLC (Mid Valley), to process 50 percent of the City's Co-mingled Recyclables (recyclables) at an indexed rate paid per ton to the City.
3. Award a ten year agreement to Cedar Avenue Recycling and Transfer Station, LP (CARTS), to process 50 percent of the City's recyclables at an indexed rate paid per ton to the City.

**EXECUTIVE SUMMARY**

On December 10, 2015, Council directed the City Attorney to negotiate agreements with the top two

proposers for green waste and recyclables processing, with each to receive approximately 50 percent of the City's materials collected.

Council may award two, ten-year agreements - one to Mid Valley to process 50 percent of the City's recyclables at an indexed rate with a floor of \$1.00 per ton paid to the City, and another to CARTS to process the remaining 50 percent on the same terms. After two months of negotiations, the parties have reached agreements, subject to Council approval.

## **BACKGROUND**

In May 2015, the City issued Request for Proposals (RFP) 3405, seeking proposals to process both recyclables and green waste. Of the proposers for recyclables, Mid Valley proposed the highest payment to the City at \$10 per ton, and CARTS was second at \$7.50. On October 8, 2015, Council was asked to approve an agreement with Mid Valley, subject to negotiation of the final terms. The item was continued to allow the Administration to pursue a "best and final offer" from the top proposers. However, that request was rescinded on October 21, 2015, and the RFP was repealed on October 23, 2015. Subsequently Council directed the City Attorney to negotiate with the top two proposers in each category.

### **2000 Sunset Agreement**

On March 16, 2000, the Council awarded an agreement to Sunset Waste Paper, Inc., (Sunset) to process residential recycling materials. The initial 5-year term of the Agreement was through March 16, 2005. The terms of the agreement provided a revenue sharing program for materials delivered to the facility.

### **First Amendment to 2002 Agreement**

On April 3, 2002, Council approved a long term agreement to Sunset, which allowed it to obtain financing for its new processing facility. The agreement also allowed for a larger portion of revenues to be shared with the City. The cost of the processing of materials was based on a per ton charge of \$15.00 per ton for processing and \$31.25 per ton for residual waste delivered to American Avenue Landfill. At the conclusion of the agreement costs had risen to \$18.55 per ton for processing, with a revenue sharing component, and \$31.25 for residual waste delivered to American Avenue Landfill.

### **Commercial Outsourcing**

On December 5, 2011, the City entered into an agreement for two commercial franchises, Allied Waste Services and Mid Valley Disposal, which allowed for the franchise holders to process recycling materials at locations other than Sunset. Sunset sued the City of Fresno for breach of the original agreement. The City and Sunset agreed to a settlement of \$2,900,000 paid over the remaining three years of the agreement. In September 2014, Mid Valley acquired Sunset, its processing facilities, and its contracts upon assignment. A request to assign the current agreement for the City was granted. The subsequent two, five year amendments to the original agreement were not renewed and an RFP for the services was requested. Since March of 2015 and during the RFP process, Mid Valley continues to process materials for the City at no cost or payment to the City.

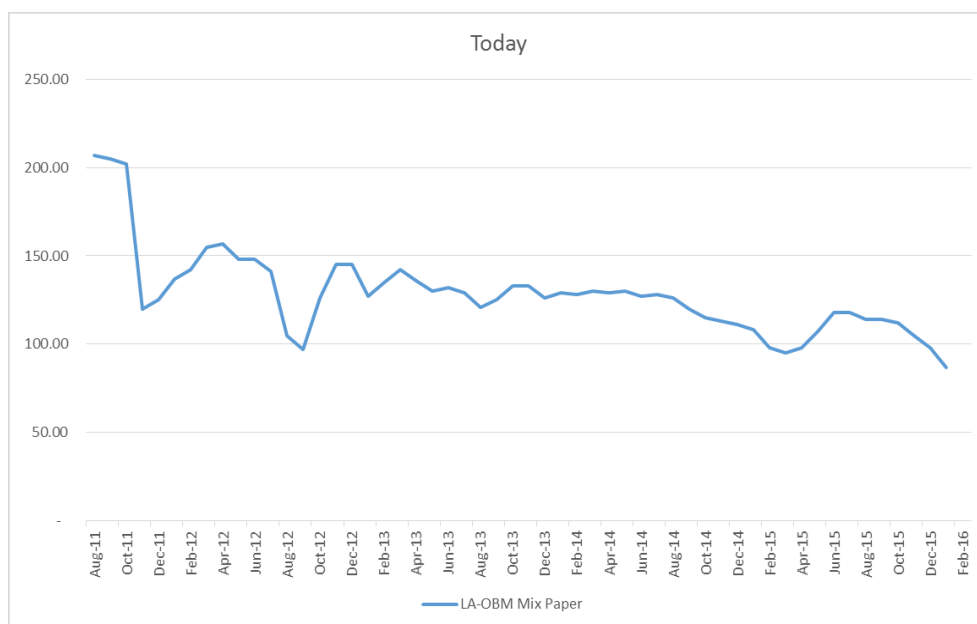
### **Proposals**

Pursuant to the RFP, Mid Valley proposed payment to the City of \$10.00 per ton and CARTS \$7.50 per ton. However, both companies have made it very clear their proposals were not fixed prices over ten years, but rather were subject to negotiation of complete terms of contracts to include provisions for the fluctuation of commodities markets, labor costs, government regulations, and contamination levels. Even if Council had awarded one or more contracts in November, the complete terms of contracts presented for consideration now likely would have been similar.

## Price Factors

The recycling processors essentially buy materials from the City, sort them, and then resell them. Materials are sorted in to categories largely composed of fiber (paper products), metals, plastics, glass, and then waste destined for the landfill. The recyclables are largely sold to markets abroad and must be transported to ports and shipped. The largest factors affecting the profitability of the operations are the commodities prices, which are affected by supply and demand of the particular items and oil prices. The commodity with the greatest influence, and therefore the customary standard for pricing, is the fiber market. Over the last five years, prices for fiber have ranged from about \$80 to \$210 per ton, with a typical price of about \$130 per ton. Currently, however, prices are very low, and the companies could be losing money even at \$0 cost or payment to the City. The companies do anticipate, however, that prices fluctuate and will increase again in the future, smoothing the costs and allowing for an offset of losses at other times. Here is a table of actual market prices over the last 5 years:

*Recycled fiber market prices August 2011 - February 2016*



Labor costs also affect the companies. Both companies indicate the feasibility of the prices agreed upon now would be affected by increases in minimum wage.

Also affecting the companies is the degree or percentage of waste materials (contaminants) included with the recyclables that must be sorted and sent to a landfill at an additional cost to the recycling company. Contamination levels vary, but average around 20 to 25 percent in materials collected by the City. When valuable recyclables are stolen or otherwise redirected from the City’s collection process, this reduces the overall value of the materials and increases the percentages of contaminants. If City solid waste customers are not diligent in separating materials or place wet paper products (wet products cannot be processed) in the City recycling containers, this negatively impacts the recycling operations. This factor is influenced by the degree and effectiveness of City

education and enforcement programs concerning recycling.

### **Current Negotiations**

The City Attorney's Office negotiated contracts with the service providers. During the negotiations the companies indicated the RFP did not thoroughly specify criteria for several important variables, such as fluctuations in market rates for the recyclables, and the percentage of contaminants in the recyclable materials, and therefore the initial price offered by Mid Valley was not firm and had been subject to changes based upon those factors.

Further, since the RFP was issued in June 2015, market prices have fallen substantially. For example, the recycled fiber market, the point of sale for roughly half of recyclable materials, was priced at \$130 in June 2015 and is currently at \$80. In addition, low oil prices are impacting the recycled plastics market, with uncertainty regarding market recovery. These factors are compounded by the possibility that labor rates may increase. During negotiations neither Mid Valley nor CARTS felt able to offer the steady per-ton prices submitted in response to the RFP in mid-2015. Both service providers insist on tying payments to the recycled fiber market index, with prices calculated quarterly.

After extensive discussions, the agreements before Council include the following material terms:

- Payment to the City pursuant to the market price for recycled fibers, with a floor of \$1.00 per ton of recyclables and increased payment to the City based upon market rates, with no ceiling (the City previously paid for recyclables processing, and is currently not paying for processing while negotiations continue); the parties share in the increased profitability as market prices rise.
- A request by service provider to change the price other than as set forth in the agreement may result in the City issuing an RFP for the services or awarding services to another service provider currently contracted to perform the services, at the City's option.
- Only exceptions to above are (1) if a change in law causes a greater than 10 percent net decrease in funds to service provider for more than a year, in which case service provider may submit a request for price adjustment along with documentation supporting a negative effect on its bottom line, or (2) if the market falls below \$70 for two consecutive quarters. In either event, service provider and the City may negotiate a rate adjustment for 60 days and if no agreement is reached, City may issue RFP or award to another service provider contracted to perform the services.
- Service providers dispose of any residuals at the County landfill.
- The City may be back-charged for excessive contaminants, based upon controlled studies conducted twice per year.

The proposed reduction in processing costs for recycling will convert the cost to the City for recycling of roughly \$350,000 per year to revenue for recycling of at least \$30,000 per year (based on average of 30,000 tons of materials delivered to the two companies). This revenue generation will help DPU further Council's request to maintain current solid waste rates until Fiscal Year 2019. Based upon these negotiations, the City Attorney believes the contractual terms likely would not improve should the City reject these contracts and send the contracts out to another RFP process.

### **ENVIRONMENTAL FINDINGS**

Pursuant to CEQA Guidelines section 15061(b)(3), there is no possibility that awarding these agreements will have a significant effect on the environment and this project is not subject to CEQA. This is because awarding the service agreements does not directly affect the environment. Each

service provider must comply with CEQA regulations in performing its services, and construction of any new facilities required to fulfill these agreements will be assessed separately prior to construction.

**LOCAL PREFERENCE**

Although all the service providers are local businesses, local preference was not considered because FMC 4-109 does not require local preference for non-consulting, non-professional services contracts.

**FISCAL IMPACT**

The City currently delivers approximately 30,000 tons of curbside co-mingled recycling. The prior agreement cost \$18.55 per ton to process, less a share of the revenue, equaling approximately \$350,000 annually. The new agreements provide revenue to the solid waste management division and rate payers of at least \$30,000, for an annual difference of at least \$380,000.

This is the table set forth in the contracts to determine prices paid to the City:

**Recyclables Rebate Index\***

Fiber Price	Price to City Per Ton
\$0 to 109.99	\$1.00
\$110.00 to \$119.99	\$2.00
\$120.00 to \$129.99	\$3.00
\$130.00 to \$139.99	\$5.00
\$140.00 to \$149.99	\$7.50
\$150.00 to \$159.99	\$9.50
\$160.00 to \$169.99	\$12.00
\$170.00 to \$179.99	\$14.00
\$180.00 to \$189.99	\$16.00
\$190.00 to \$199.99	\$18.00
\$200.00 to \$209.99	\$20.00
>\$209.99	\$20.00 + \$2.00 / \$10

\*Revenue sharing shall be tied to the PPI Recovered Paper - Export market index, using the Mixed Paper (2) - OBM LA commodity designation.

Attachments:

- Agreement with Mid Valley
- Agreement with CARTS