File No. 131145 Committee Item No. 7
Board Item No. 28

# COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

**Committee:** Land Use and Economic Development **Date** January 13, 2014

**Board of Supervisors Meeting** **Date** January 28, 2014

| Cmte | Board | |
|---|---|---|
| ☐ | ☐ | Motion |
| ☐ | ☐ | Resolution |
| ☒ | ☒ | Ordinance |
| ☒ | ☒ | Legislative Digest |
| ☐ | ☐ | Budget and Legislative Analyst Report |
| ☐ | ☐ | Youth Commission Report |
| ☒ | ☒ | Introduction Form |
| ☒ | ☒ | Department/Agency Cover Letter and/or Report |
| ☐ | ☐ | MOU |
| ☐ | ☐ | Grant Information Form |
| ☐ | ☐ | Grant Budget |
| ☐ | ☐ | Subcontract Budget |
| ☐ | ☐ | Contract/Agreement |
| ☐ | ☐ | Form 126 – Ethics Commission |
| ☐ | ☐ | Award Letter |
| ☐ | ☐ | Application |
| ☐ | ☐ | Public Correspondence |

OTHER (Use back side if additional space is needed)

| | | |
|---|---|---|
| ☒ | ☒ | Environmental Review Determination, dtd 1/8/14 |
| ☐ | ☐ | |
| ☐ | ☐ | |
| ☐ | ☐ | |
| ☐ | ☐ | |

Completed by: Andrea Ausberry Date January 9, 2014
Completed by: Alisa Miller Date January 14, 2014

[Competitive Selection Process - Landfill Disposal Provider]

**Ordinance making findings that the City's competitive process for selecting a preferred contractor for landfill disposal was adequate, fair, and consistent with the request for proposals; ratifying the selection of Recology San Francisco (Recology) as the preferred contractor; ratifying the termination of the landfill disposal and facilitation agreements with Recology; endorsing environmental review under the California Environmental Quality Act (CEQA) of the Recology proposal as the City's preferred project alternative; clarifying that, consistent with prior practice and existing law, the definition of "services" contained in Administrative Code, Chapter 21, excludes the agreements resulting from the competitive selection process; and making environmental findings under CEQA.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
**Additions to Codes** are in *single-underline italics Times New Roman font*.
**Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
**Board amendment additions** are in double-underlined Arial font.
**Board amendment deletions** are in ~~strikethrough Arial font~~.
**Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). That determination is on file with the Clerk of the Board of Supervisors in File No. 131145 and is incorporated herein by reference.

Section 2. Project Findings. The Board of Supervisors makes the following findings:

(a) The California Department of Resources Recycling and Recovery requires that the City have a plan for 15 years of landfill disposal capacity.

(b) In 1987, the City entered into long-term agreements concerning the disposal, transfer and transportation of the City's refuse (collectively, "1987 Agreements") with Sanitary Fill Company (now Recology San Francisco) and the Oakland Scavenger Company (now Waste Management of Alameda County). The 1987 Agreements were not the subject of a competitive selection process. They provided for disposal of up to 15 million tons of San Francisco's refuse in the Altamont Landfill or 65 years of disposal, whichever comes first, and for the transfer of the City's refuse at Recology's transfer station and transportation of the refuse to the Altamont Landfill. The Department of the Environment estimates that the City will reach the tonnage limit under that agreement by late 2015.

(c) In 2006, the Department of the Environment began an exhaustive search to determine the best option for disposal of the City's refuse after the conclusion of the 1987 Agreements. In doing so, the Department of the Environment provided significant opportunity for public input, and elected to use a competitive selection process ("Competitive Selection Process") to select a proposed contractor. Specifically,

(1) The Department of the Environment held a series of noticed public hearings in 2007 to assess the public's priority considerations for a new disposal agreement. Those meetings gave the public numerous opportunities to participate in the selection process for a new disposal contract.

(2) On May 30, 2008, with the guidance obtained from the public, the Department of the Environment issued a Request for Qualifications ("RFQ"), and invited every landfill operator in the State of California to submit a response.

(3) In February 2009, the Department of the Environment sent all landfill operators that responded to the RFQ the Request for Proposals for Landfill Disposal Capacity

("RFP"). The RFP required each proposer to provide detailed information regarding its principal proposed landfill and any proposed back-up landfill. Only two companies – SF Recycling & Disposal, Inc. (now Recology San Francisco and hereinafter referred to as "Recology") and Waste Management of Alameda County, Inc. ("Waste Management") – submitted responses to the RFP and satisfied all pre-submission requirements.

(4) A neutral and objective scoring panel reviewed and scored both Recology and Waste Management's proposals using standardized criteria, considering both written submissions and an oral interview with each company.

(5) The scoring panel selected Recology's proposal ("Recology Proposal") as the preferred proposal. The Recology Proposal met the City's operational and environmental requirements as set out in the RFP and offered adequate permitted capacity to meet the City's needs, and among other advantages, included proposed disposal rates that were substantially less than those of Waste Management, potentially resulting in considerable future savings for the City's rate payers. The Recology Proposal provided for disposal of the City's refuse at Recology's Ostrom Road Landfill in Yuba County, with transportation to the landfill by rail, or, as a back-up site, Recology's Hay Road Landfill in Solano County, with transportation to the landfill by truck.

(6) On September 10, 2009, the Department of the Environment issued a Notice of Intent to Award, notifying the public and all interested parties that the Department of the Environment intended to award the contract for landfill disposal capacity to Recology.

(7) Waste Management then submitted two formal protests. The Department of the Environment evaluated both protests, and found that the objections did not have merit.

(8) In 2010, the Department of the Environment negotiated with Recology a proposed Landfill Disposal Agreement concerning the disposal of the City's refuse, and a proposed Amended and Restated Facilitation Agreement ("Facilitation Agreement")

concerning transfer of the City's refuse at Recology's transfer station and the means of transporting refuse to the landfill. Under the terms of those agreements (as under the terms of the 1987 Agreements), the City itself would not procure or pay for disposal, transfer or transportation services. Instead, the agreements established certain charges for disposal, transfer and transportation of refuse that Recology would apply to include in the rates it charges residential ratepayers in San Francisco for the collection and disposal of refuse. Those rates are set by the Director of the Department of Public Works and the Rate Board in accordance with the Refuse Collection and Disposal Ordinance, enacted by initiative and codified at Appendix 1 to the Administrative Code.

(d) On September 23, 2010, the Department of the Environment asked the Board of Supervisors to approve the Landfill Disposal Agreement and Facilitation Agreement with Recology under Charter Section 9.118(b). Consistent with the Recology Proposal, the proposed Landfill Disposal Agreement provided for disposal of the City's refuse at the Ostrom Road Landfill or, as a back-up site, the Hay Road Landfill.

(e) Waste Management objected to the agreements on several grounds, including a claim that the Department of the Environment failed to comply with the competitive selection requirements of Chapter 21 of the Administrative Code.

(f) On July 26, 2011, after considering all of the objections to the agreements, and after four committee hearings over nearly ten months, the Board of Supervisors adopted a resolution approving the Landfill Disposal Agreement and Facilitation Agreement with Recology under Charter Section 9.118(b). At that time, the Board of Supervisors approved the Landfill Disposal Agreement and Facilitation Agreement for terms exceeding ten years; and authorized the Director of the Department of the Environment to execute agreements in substantially the form of the Landfill Disposal Agreement and Facilitation Agreement on file with the Clerk of the Board of Supervisors. The Board of Supervisors also authorized the

Director of the Department of the Environment to enter into any additions, amendments, or other modifications to the Landfill Disposal Agreement and Facilitation Agreement that satisfied specified terms. Finally, the Board of Supervisors stated that it "approves and ratifies all prior actions taken by officials, employees, and agents of the Department of the Environment and the City with respect to the Landfill Disposal Agreement and Facilitation Agreement."

(g) On August 10, 2011, Waste Management filed a lawsuit in San Francisco Superior Court challenging the Landfill Disposal Agreement and Facilitation Agreement, alleging that the Department of the Environment failed to comply with Chapter 21 of the Administrative Code and should have conducted additional environmental review under Chapter 9 of the Environment Code. On August 25, 2011, Yuba Group Against Garbage ("YuGAG") and the Sustainability, Parks, Recycling and Wildlife Legal Defense Fund ("SPRAWLDEF") also filed lawsuits in San Francisco Superior Court challenging the Landfill Disposal Agreement and Facilitation Agreement, alleging, among other things, that the Department of the Environment failed to comply with Chapter 21 of the Administrative Code. In their responsive pleadings, the City and Recology denied these allegations and affirmatively contended, among other things, that Chapter 21 of the Administrative Code did not apply to the agreements.

(h) On April 18, 2012, Yuba County announced its intention to complete an Environmental Impact Report ("EIR") concerning the transportation of San Francisco's refuse from Recology's San Francisco transfer station to the Ostrom Road Landfill in Yuba County.

(i) In light of this EIR process and because of its relevance to San Francisco, the City's Department of the Environment and Planning Department elected to participate in the EIR process and conduct CEQA review, and to review as its proposed project one or more agreements with one or more Recology affiliates based upon the Recology Proposal ("CEQA Process"). To facilitate the City's full and complete participation in the CEQA Process and the

City's CEQA review, the City asked Recology to agree to terminate the Landfill Disposal Agreement and Facilitation Agreement, and Recology did so. While the Recology Proposal remains the City's preferred alternative as a result of the public review and Competitive Selection Process that took place from 2006 to 2010, terminating the agreements under these circumstances, to take into account the results of the CEQA process is in the best interest of the City and the public. Accordingly, the City and Recology terminated the Landfill Disposal Agreement and Facilitation Agreement on November 26, 2012. Under the express terms of the Termination Agreement, the City reserves full discretion over any future decisions regarding the Recology Proposal in light of the CEQA review, including whether to approve the Proposal, whether to adopt possible mitigation measures that might apply, and whether to adopt any and all modifications or alternatives to the Proposal that might be identified through the CEQA process, or otherwise.

(j) Following termination of the Landfill Disposal Agreement and Facilitation Agreement, the lawsuits initiated by Waste Management and YuGAG were dismissed on grounds of mootness and lack of ripeness. The SPRAWLDEF litigation was dismissed by stipulation. YuGAG has filed an appeal, asserting that a justiciable controversy still exists concerning whether the Competitive Selection Process complied with Chapter 21. The YuGAG litigation remains expensive and burdensome for the City. In addition, any future lawsuits would also be expensive and burdensome, and could cause undue delay in the implementation of a landfill disposal agreement. This Board therefore seeks to ratify the actions taken and clarify the provisions set forth in Chapter 21 for contracts for services.

Section 3. Chapter 21 Ratification; Clarification.

(a) The Board of Supervisors finds that the Competitive Selection Process that resulted in the City's selection of Recology and the Board of Supervisors' approval of the now-

terminated Landfill Disposal Agreement and Facilitation Agreement complied with any requirements of Chapter 21 of the San Francisco Administrative Code and that the purposes of competitive selection have already been satisfied by the Competitive Selection Process.

(b) The Board of Supervisors ratifies and confirms all actions taken by City officials in carrying out the Competitive Selection Process and selecting Recology as the City's preferred contractor, and then terminating the Landfill Disposal Agreement and Facilitation Agreement.

(c) The Board of Supervisors endorses the current CEQA Process under which the Department of the Environment, the Planning Department and other City agencies and staff have undertaken environmental review of the proposed project, including the disposal and transportation of refuse consistent with the Recology Proposal.

(d) To avoid litigation that could jeopardize the City's ability to ensure continued landfill capacity by needlessly delaying the project and to address any potential ambiguity in the legislation, the Board clarifies that, consistent with prior practice in the approval of the 1987 Agreements, contracts for the disposal and transportation of refuse resulting from the Competitive Selection Process are not now, and never have been, contracts for "services" within the meaning of Sections 21.02(i), (m) and (s) of the Administrative Code or their statutory predecessors. Except as expressly stated in this provision with regard to contracts involving the disposal and transportation of refuse resulting from the Competitive Selection Process, this clarification of the meaning and intent of Chapter 21 shall have no effect on the meaning, scope or application to other contracts of Chapter 21 of the Administrative Code. This clarification shall apply retroactively to actions taken by City officials or City agencies or entities in connection with the Competitive Selection Process.

(e) Nothing in this ordinance is intended, or shall be contrued, to commit or require the City to take or agree to any future actions regarding the Recology Proposal, including

approving the Proposal or entering into any contract with Recology or any other party for the disposal and/or transportation of refuse.

(f) ~~(e)~~ The provisions of this Ordinance are severable. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid portion or application.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
THOMAS J. OWEN
Deputy City Attorney

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FILE NO. 131145

# LEGISLATIVE DIGEST

[Substituted in Board 1/7/2014]

[Competitive Selection Process - Landfill Disposal Provider]

**Ordinance making findings that the City's competitive process for selecting a preferred contractor for landfill disposal was adequate and fair and consistent with the request for proposals; ratifying the selection of Recology San Francisco as the preferred contractor; ratifying the termination of the landfill disposal and facilitation agreements with Recology; endorsing environmental review under the California Environmental Quality Act (CEQA) of the Recology proposal as the City's preferred project alternative; clarifying that, consistent with prior practice and existing law, the definition of "services" contained in Chapter 21 of the Administrative Code excludes the agreements resulting from the competitive selection process; and making environmental findings under CEQA.**

## Background Information and Existing Law

The City's Refuse Collection and Disposal Ordinance, a voter-approved initiative, provides that "[r]efuse collected by refuse collectors shall be disposed of by such persons, firms or corporations and in such manner or by such method or methods as from time to time designated by the Board of Supervisors of the City and County of San Francisco." The Department of the Environment estimates that the City's current landfill disposal agreement with Waste Management of Alameda County, Inc., executed in 1987, will expire in late 2015.

Beginning in 2006, the Department undertook a comprehensive competitive selection process to identify a provider for a new landfill disposal agreement. At the end of the process, the Department chose a proposal submitted by Recology San Francisco. In 2010, the Department negotiated, and in 2011 the Board of Supervisors approved, a landfill disposal agreement and a revised facilitation agreement with Recology. Waste Management of Alameda County and two private organizations sued the City to overturn the agreements.

In 2012, the City and Recology terminated the agreements to enable the City to take into account the results of the current CEQA review of the Recology proposal taking place in Yuba County, where Recology's primary landfill site is located. The three lawsuits against the agreements have been dismissed, either by the courts or by stipulation, although one plaintiff has filed an appeal of the dismissal, alleging that the selection process for the agreements violated Chapter 21.

Administrative Code Chapter 21 establishes rules, including certain competitive solicitation and selection requirements, for contracts where the City buys goods or services. Under the 1987 landfill disposal agreement and Recology's proposal, the City does not buy or pay for the disposal, transfer or transportation of refuse for itself. Instead, the agreements designate an exclusive disposal site, subject to terms and conditions, and establish certain

charges for refuse disposal, transfer and transportation services that Recology in turn, in its separate capacity as a licensed refuse hauler in the City, may charge its customers. Rates for residential customers must be approved by the Director of the Department of Public Works and the Rate Board in accordance with the Refuse Collection and Disposal Ordinance.

## What the Legislation Would Do

The proposed ordinance would find that the competitive selection process that resulted in the City's selection of Recology and the Board of Supervisors' approval of the now-terminated agreements met any requirements of Chapter 21 and that the purposes of competitive selection in general have been satisfied by that process.

The proposed ordinance would ratify the actions taken by City officials to carry out the competitive selection process and select Recology as the City's preferred contractor, and then to terminate the Landfill Disposal Agreement and Facilitation Agreement.

The proposed ordinance would endorse the current CEQA review of the proposed project, including the disposal and transportation of refuse consistent with Recology's proposal.

And the proposed ordinance would clarify that, consistent with the terms of Chapter 21 and prior practice in the approval of the 1987 landfill disposal agreement, contracts for the disposal and transportation of refuse resulting from the competitive selection process used here are not subject to Chapter 21.

The proposed ordinance would not require the City to contract with Recology or to accept the Recology proposal without modifications identified through the CEQA review process. The proposed ordinance would not prevent the City from choosing to engage in a competitive selection process for a landfill disposal provider. And the Board of Supervisors would still need to approve any landfill disposal agreement for a term of more than 10 years.

* * *

*The substitute legislation, dated 1/7/2014, added language at page 6, lines 7-12, and at page 7, line 23, through page 8, line 2, making explicit that adoption of the ordinance would not commit the City to enter into any future contracts with Recology. The substitute legislation also made minor stylistic changes to the text of the ordinance.*

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 8, 2014

**File No. 131145**

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On January 7, 2014, Supervisor Avalos introduced the following substituted legislation:

**File No. 131145**

**Ordinance making findings that the City's competitive process for selecting a preferred contractor for landfill disposal was adequate and fair and consistent with the request for proposals; ratifying the selection of Recology San Francisco as the preferred contractor; ratifying the termination of the landfill disposal and facilitation agreements with Recology; endorsing environmental review under the California Environmental Quality Act (CEQA) of the Recology proposal as the City's preferred project alternative; clarifying that, consistent with prior practice and existing law, the definition of "services" contained in Chapter 21 of the Administrative Code excludes the agreements resulting from the competitive selection process; and making environmental findings under CEQA.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

By: Andrea Ausberry, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Nannie Turrell, Environmental Planning

Not a project per CEQA Guidelines Section 15060(c)(2).
Nannie R Turrell
January 8, 2014

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
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Fax No. 554-5163
TDD/TTY No. 554-5227

# MEMORANDUM

TO: Mohammed Nuru, Director, Department of Public Works
Monica Nutter, Director, Department of the Environment

FROM: Andrea Ausberry, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: December 5, 2013

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Avalos on November 26, 2013:

**File No. 131145**

Ordinance making findings that the City's competitive process for selecting a preferred contractor for landfill disposal was adequate, fair, and consistent with the request for proposals; ratifying the selection of Recology San Francisco (Recology) as the preferred contractor; ratifying the termination of the landfill disposal and facilitation agreements with Recology; endorsing the environmental review, under the California Environmental Quality Act (CEQA), of the Recology proposal as the City's preferred project alternative; clarifying that, consistent with prior practice and existing law, the definition of "services" contained in Administrative Code, Chapter 21, excludes the agreements resulting from the competitive selection process; and making environmental findings under CEQA.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Frank Lee, Department of Public Works
Monica Fish, Department of the Environment

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☐ 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [ ] inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☒ 8. Substitute Legislation File No. 131145

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

**Sponsor(s):**

Supervisors Avalos, Farrell, Chiu, Tang, Breed, Kim, Yee, Wiener, Campos, Cohen, and Mar

**Subject:**

Ordinance - Selection process for landfill disposal provider

**The text is listed below or attached:**

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

Print Form

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Time stamp or meeting date

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**Sponsor(s):**

Supervisors Avalos, [redacted], Farrell, Chiu, Tang, Breed, Kim, Yee, Wiener, Campos, Cohen, Mar

**Subject:**

Ordinance - Selection process for landfill disposal provider

**The text is listed below or attached:**

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

131145