

LEGISLATIVE DIGEST

[Substitute Ordinance, dated 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.

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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.