

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2007 SEP -6 PM 12:14

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: September 18, 2007

RE: **Informational Report Summarizing Events And Impacts On Garbage, Yard Waste, And Recycling Service In July 2007 Due To Waste Management Of Alameda County's Lockout Of Teamsters Local 70**

SUMMARY

On July 2, 2007, at 5:00 p.m., Waste Management of Alameda County (WMAC) locked out its collection and long-haul drivers represented by International Brotherhood of Teamsters Local 70, and deployed temporary replacement drivers. The lockout dramatically affected all WMAC services throughout their service district, which includes Oakland and several neighboring communities. Services were not returned to normal levels until the lockout ended and WMAC's Local 70 drivers returned to work on July 30, 2007. In this period, the City expended considerable effort and cost to provide information and assistance to affected WMAC customers in Oakland, to continue normal City operations in the face of reduced or unavailable WMAC services, and to pursue all legal remedies to address WMAC's breach of contract. This report summarizes the events and impacts on Oakland of the July 2007 WMAC lockout.

FISCAL IMPACT

The City incurred costs as a direct result of the WMAC lockout. These costs include the disposal of solid waste and green waste at the City of Berkeley Transfer Station, labor and vehicle operating costs for transportation of solid waste and green waste to Berkeley, staff hours dedicated to providing customer service and contract management, attorneys' costs for litigation to obtain a court order, and consultant services in support of legal actions regarding the contract breach. The City is pursuing compensatory damages to recover these costs.

BACKGROUND

Through the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Agreement), WMAC is the sole provider of solid waste collection and disposal services in Oakland, for both residential and commercial customers. The Agreement also provides for: weekly collection of residential recycling in one-half of the City, yard trimmings with food scraps, and bulky pickup; collection of solid waste, recyclables, and yard trimmings from City facilities; and disposal/recycling of materials delivered by the City to the Davis Street Transfer Station. California Waste Solutions provides weekly recycling collection to residences in their service area, which comprises North and West Oakland. During the lockout, WMAC failed to provide services in accordance with the standards of the Agreement. In the first period

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of the lockout, WMAC provided only solid waste collection, and in later weeks added residential yard trimmings collection and then residential recycling collection. However, based on field observations, calls to the City from Oakland customers, and data provided by WMAC, none of the services were provided to the standards of the Agreement at any time during the lockout.

Immediately upon receiving notice of the lockout, the Mayor's Office, City Administrator's Office, City Attorney's Office and Public Works Agency met to determine the proper course of action to address the unfolding situation. The following is a timeline of actions the City took against WMAC to correct service for the residents and businesses of Oakland.

- July 3, 2007 – Public Works Agency (PWA) issued a Notice of Violation for failure to collect yard waste/food scraps and recyclables
- July 5, 2007 – PWA issued a Notice of Default as WMAC did not cure the breach within two days
- July 6, 2007 – PWA (letter dated July 5) issued a Revised Notice of Default for failure to collect garbage on a weekly basis
- July 11, 2007 – PWA issued a Revised Notice of Default for failure to collect garbage, yard waste/food scraps and recyclables
- July 12, 2007 – City Attorney filed a complaint with Alameda County Superior Court for breach of contract and violation of the Municipal Code provisions seeking an injunction to compel WMAC to perform
- July 12, 2007 – City Attorney sent notice of default to WMAC's performance bond surety company under the performance bond
- July 12, 2007 – City Attorney sent a performance demand letter on WMAC's Guaranty
- July 12, 2007 – Mayor Dellums, Councilmembers, and City Attorney held press conference informing the residents of the City seeking relief through the courts
- July 16 - 26, 2007 – Mayor Dellums began mediation between WMAC and Teamsters in conjunction with the federal mediator
- July 17, 2007 – The Courts issued a Temporary Restraining Order against WMAC ordering WMAC to immediately collect garbage, yard waste/food scraps, and recycling according to their contract
- July 17, 2007 – Financial Management Agency issued Notice of Suspension of Payment under OMC 8.28 (Solid Waste and Disposal regulations) for delinquent invoices submitted to the City resulting from service billings disputes arising during the lockout
- July 26, 2007 – Mayor Dellums announces WMAC and Teamsters reached agreement on a new contract
- July 27, 2007 – Mayor Dellums held press conference with City Attorney, City Administrator, Public Works, WMAC and Teamsters to announce return to normal service
- July 30, 2007 – City Attorney dismissed the City's action seeking to find WMAC in contempt of Court. Underlining breach and a public nuisance action is pending.

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- August 15, 2007 – PWA letter sent to WMAC requesting fair and generous rate rebate or credit to Oakland residents for service disruption during the month of July

KEY ISSUES AND IMPACTS

The Mayor's efforts to resolve the labor dispute between WMAC and the Teamsters resulted in the end of the lockout. During the lockout, the City's other efforts were focused in four areas: (1) daily operations, (2) customer service, (3) contract management, and (4) legal enforcement.

WMAC services to City facilities were irregular during the entire month of July 2007, and based on contingency plans prepared prior to the lockout, Public Works Agency staff adjusted operations to minimize the impact of irregular service on the public, City operations, and the tenants and users of City facilities. City vehicles were rerouted to the City of Berkeley Transfer Station because the Davis Street Transfer Station was being picketed by locked out WMAC employees.

The City's Recycling Hotline (238-SAVE) and email recycling@oaklandnet.com received nearly 3,500 messages and live calls regarding service issues during July 2007, compared to just 55 in July 2006. The great majority of these calls were logged as electronic work orders and sent to WMAC as customer reports within a day of receipt. Critical service requests were relayed to WMAC by email daily. Recycling Program staff provided continuous updates on the WMAC situation through website postings, voicemail messages, automated and individual email responses to inquiries, and live customer service.

Reports from the public supplemented by observations on the street by the PWA Litter Enforcement Officers, other City staff, and a contractor hired to monitor WMAC performance, quickly formed a picture of widespread service failure. On July 3, 2007, the City provided WMAC with a Notice of Violation, informing WMAC that its failure to provide service constituted an Event of Default. City Attorney staff quickly evaluated and pursued all available remedies to bring WMAC into compliance with the Agreement, including obtaining a Temporary Restraining Order on July 17, 2007 ordering WMAC to provide full service without limitation to Oakland under the terms of the Agreement.

Despite the legal action, WMAC did not restore services in Oakland in accordance with the standards required by the Agreement. WMAC's failure to perform created a "public nuisance," a finding made by the court; this affected the quality of life, public health and safety, the local economy and the natural environment in Oakland. In addition, the City's waste reduction goals were likely harmed as residents and businesses left without solid waste collection had no choice but to contaminate the yard waste and recycling containers. Also, the City had reports of WMAC workers mixing separated recyclables with garbage. The ripple effect of these conditions

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on good recycling behavior nurtured by the City staff since the early 1990's may have been significantly set back.

During July 2007, staff explored the possibility of obtaining solid waste and recycling collection and disposal services from alternative experienced collection companies to fill in the gap in service created by WMAC. This exercise proved to be extremely complex, and involved significant liabilities and obstacles on the part of interested companies.

Overall, this experience revealed a significant vulnerability to the City to provide for solid waste, yard trimmings, and recycling collection and these services should be revisited as essential City services, similar to police and fire. The agreement between WMAC and the Teamsters provides for labor peace (no lockout, no strike) through the term of the agreement. It is evident that future systems and agreements for solid waste, yard trimmings and recycling collection should include carefully designed provisions regarding labor issues.

FUTURE POLICIES & PLANNING

PWA staff, through implementation of the Zero Waste Strategic plan (adopted by City Council Resolution No. #79774 C.M.S., 2006,) has embarked on a study of the entire disposal system, principally analyzing policy and operational alternatives for consideration by the City. The planning goal is to minimize solid waste generation and disposal. Staff will provide a report in fall of 2008 on the findings of this research.

SUSTAINABLE OPPORTUNITIES

Economic: Regular and reliable provision of solid waste and recycling collection services are essential to sustaining and growing a healthy economy.

Environmental: Regular and reliable provision of recycling and yard trimmings/food scraps collection services are essential to the City's ability to meet state-mandated diversion requirements and to attain its goals of 75% waste reduction and zero waste.

Social Equity: Failure to collect garbage and recycling at multifamily buildings and commercial accounts disproportionately affects residents in the less affluent sections of the City.

DISABILITY AND SENIOR CITIZEN ACCESS

Staff has data that suggests disabled residents who receive backyard service were disproportionately affected by the lockout, since replacement drivers unfamiliar with the routes were more likely to overlook non-standard curbside service.

ACTION REQUESTED

Staff recommends that the Council accept this report summarizing events and impacts on garbage, yard waste, and recycling service in July 2007 due to Waste Management of Alameda County lockout of Teamsters Local 70.

Respectfully submitted,



Raul Godinez II, P.E.
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APPROVED AND FORWARDED TO THE
CITY COUNCIL


Office of the City Administrator

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