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**Title:** Subject: Waste Management of Alameda County - Settlement Case  
From: Office of the City Attorney  
Recommendation: Adopt a Resolution Authorizing and Directing the City Attorney to Compromise and Settle the Threatened Litigation by Waste Management of Alameda County, Inc. (WMAC) Against City of Oakland Pursuant to Which Services to Oakland Residents will be Increased and a Rate Increase Will be Granted

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Date	Ver.	Action By	Action	Result
7/15/2003	1	Meeting of the Oakland City Council	Adopted as Amended	Pass
6/26/2003	1	*Rules & Legislation Committee	Scheduled	

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CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CA 94612

Subject: RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE THREATENED LITIGATION BY WASTE MANAGEMENT OF ALAMEDA COUNTY (WMAC) AGAINST THE CITY OF OAKLAND PURSUANT TO WHICH SERVICES TO OAKLAND RESIDENTS WILL BE INCREASED AND A RATE INCREASE WILL BE GRANTED

Dear President De La Fuente and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared and recommends settlement of the above-entitled matter which arises from an increase in the garbage fees paid by Waste Management of Alameda County pursuant to County of Alameda Conditional Use Permit 5512.

Garbage generated in the City of Oakland is collected by Waste Management of Alameda County (WMAC), under a franchise agreement executed in 1995. Pursuant to that franchise, WMAC disposes the garbage at its landfill at the Altamont Pass.

In March 2000, Alameda County and WMAC settled a lawsuit, brought by the Sierra Club and others, pertaining to the issuance of a conditional use permit for the needed expansion of the Altamont Landfill. Pursuant to that settlement agreement, the County issued a conditional use permit to WMAC to expand the landfill, upon the condition that it collect certain fees from its customers, including the City of Oakland, to be used for land acquisition and community improvement purposes in eastern Alameda County.

Shortly after the settlement of that lawsuit, WMAC demanded that the City of Oakland increase its rates consistent with the requirements of the settlement. Oakland has resisted this request up until the present, and has done so in the face of litigation

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Office of the city Attorney John A. Russo city Attorney

HONORABLE CITY COUNCIL

Oakland, California

July 15, 2003

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threatened by WMAC. To date, the City has incurred the costs of outside legal counsel to advise and ultimately defend the City with regard to this request. If litigation is brought, the City will certainly spend more than

\$500,000 defending the case.

At issue is the manner in which the fees were imposed on the City by the County, or more specifically, the manner in which the fees were imposed on WMAC by the County. Under the City's franchise with WMAC, the City has agreed to pass on to City customers increased regulatory fees and taxes imposed on and paid by WMAC. The franchise agreement does not provide for the pass through of cost increases to WMAC resulting from contractor/county agreements or negotiations.

Because the fees at issue resulted from a lawsuit settlement, the City has argued that they resulted from WMAC/County agreement, and do not constitute a regulatory fee imposed on WMAC. However, in fact, the fees will be used to reduce the environmental impacts of needed landfill expansion on the surrounding county and communities, much in the nature of regulatory fees. Additionally, by providing a ready source of revenue for the acquisition of surrounding open space, and thus reducing pressure on East Bay Regional Park District to acquire the same land, the fees can have a local benefit by freeing up EBRPD resources for local acquisitions. Lastly, the City does not contend that Alameda County lacks the inherent power to impose the fees.

WMAC and the City have negotiated a settlement that will result in the impositions of the fee on City ratepayers, in exchange for certain specified improvements in local service. Specifically

- 1) Waste Management rate payers in the City of Oakland will begin paying the \$1.25 fee required by Alameda County Conditional Use Permit 5512 beginning July 1, 2003;
- 2) WMAC will absorb \$.25 of the \$1.25 total Alameda County Conditional Use Permit 5512 mandated fees for the entire past period of the implementation of said \$.25 fee. Such absorption will come to an end on July 1, 2003;
- 3) The \$1.00 portion of the county mandated fee, which would have been implemented by July 1, 2000, will be forgiven for the period July 1, 2000 to January 1, 2002;
- 4) Waste Management ratepayers in the City of Oakland will pay the \$1.00 portion of the \$1.25 county mandated fee for the period beginning January 1, 2002 and ending July 1, 2003. Payment of this sum will be amortized, without any interest charges, over the remaining balance of WMAC's residential refuse franchise agreement with the City of Oakland;

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5) WMAC will implement an on-call bulky waste pick-up service within the City of Oakland effective upon resolution of this

mailer; and

6) WMAC will provide Saturday collection service along International Boulevard and Telegraph Avenue effective immediately upon resolution of this matter.

The settlement of this matter will allow the City to preserve that portion of the general fund that would have

been used to defend the lawsuit, and it will obviate the need for the County of Alameda to impose the fee by County ordinance. The fee results in an improved environment in the area adjacent to the landfill, and has the potential of freeing up other government funds for local environmental improvements.

RECOMMENDATION

While the Office of the City Attorney believes we have a very good chance of winning the lawsuit threatened by Waste Management on behalf of the County, the eventual need to expand the Altamont landfill is clearly a subject of County concern.

The County has the authority, within certain limitations, to impose fees similar to those being passed along to many Alameda County cities as a result of the WMAC/County agreement. In short, we could win this lawsuit and still face the same fee which the County is indirectly imposing on Oakland through the settlement. Therefore, we recommend a speeding and fair end to this dispute as set forth in the attached Resolution.

Respectfully submitted,

JOHN A. RUSSO

City Attorney

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OAKLAND

RESOLUTION No

CITY COUNCIL

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE THREATENED LITIGATION BY WASTE MANAGEMENT OF ALAMEDA COUNTY (WMAC) AGAINST THE CITY' OF OAKLAND PURSUANT TO WHICH SERVICES TO OAKLAND RESIDENTS WILL BE INCREASED AND A RATE INCREASE WILL BE GRANTED

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the threatened case of Waste Management of Alameda County vs. City of Oakland, by entering into a settlement agreement with WMAC which shall provide as follows:

1) Waste Management rate payers in the City of Oakland will begin paying the \$1.25 fee required by Alameda County Conditional Use Permit 5512

beginning July 1, 2003;

2) WMAC will absorb \$.25 of the \$1.25 total Alameda County mandated Conditional Use Permit 5512 fees for the entire past period of the implementation of said \$25 fee. Such absorption will come to an end on July 1, 2003;

3) The \$1.00 portion of the county mandated fee, which would have been implemented by July 1, 2000, will be forgiven for the period July 1, 2000

to January 1, 2002;

4) Waste Management ratepayers in the City of Oakland will pay the \$1.00 portion of the county mandated \$1.25 fee for the period beginning January 1, 2002 and ending July 1, 2003. Payment of this sum will be amortized, without any interest charges, over the remaining balance of WMAC's residential refuse franchise

agreement with the City of Oakl and;

5) WMAC will implement an on-call bulky waste pick-up service within the City of Oakland effective upon resolution of this matter; and

6) WMAC will provide Saturday collection service along International Boulevard and Telegraph Avenue effective immediately upon resolution

of this matter.

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps may be necessary to effect said settlement.

IN COUNCIL OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

2003

AYES- BROOKS, BRUNNER, CHANG, NADEL QUANI REID, WAN AND PRESIDENT DE LA FUENTE  
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ASSENT- ORNCOUNCIL.

ABSTENTION-

ATTEST

JUL 1 ç 2003

CEDA FLOYD

City Clerk and Clerk of the Council of the City of Oakland, California

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