



## AGENDA ITEM SUMMARY

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<b>AGENDA DATE</b>	<i>April 23, 2019</i>
<b>DESCRIPTION</b>	CONSIDER ON FIRST READING ORDINANCE NO. 2019-14; AN ORDINANCE AMENDING ORDINANCE NO. 2003-02, CAPTIONED "CITY OF BOERNE SOLID WASTE COLLECTION AND DISPOSAL FRANCHISE AGREEMENT", DATED JANUARY 28, 2003, AND ENACTING A SECOND AMENDED CITY OF BOERNE SOLID WASTE COLLECTION AND DISPOSAL FRANCHISE AGREEMENT, ESTABLISHING THE RATES TO BE CHARGED FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION AND DISPOSAL; AND PROVIDING THE TERMS AND CONDITIONS OF THE AGREEMENT."
<b>STAFF'S RECOMMENDED ACTION (be specific)</b>	Approve on first reading Ordinance No. 2019-14; amending Ordinance No. 2003-02, captioned "City of Boerne Solid Waste Collection and disposal Franchise Agreement", dated January 28, 2003, and enacting a second amended City of Boerne Solid Waste Collection and Disposal Franchise Agreement, establishing the rates to be charged for residential and commercial solid waste collection and disposal; and providing the terms and conditions of the agreement."
<b>CONTACT PERSON</b>	Molly Solis, City Attorney; Jeff Thompson, Deputy City Manager & General Manager of Utilities
<b>SUMMARY</b>	<p>Providing solid waste collection, recycling, &amp; disposal service is typically a function of a municipality that is either provided by a city department or outsourced. Boerne chose many years ago to outsource this service and has an agreement with Waste Management of Texas, Inc. (WMI). They have been our provider for over 20 years. We believe that having a single provider eliminates confusion, minimizes large truck traffic in neighborhoods, provides for the best overall rates and costs to the city and its customers.</p> <p>We have not gone through a formal bid process but at times over the last 12 years staff has met with competitive providers, such as Tiger Sanitation, Vaccaro, and Republic Services to review our rates and service levels versus the market. On each occasion, the other entities concluded that they could not match the residential rates we are being charged by WMI. We have 4,800 residential customers and 360 commercial accounts. The last rate increase was for residential customers in 2012.</p>

	<p>We have been in negotiation with WMI officials, as well as their legal department, to finalize the details of a proposed amended agreement to the 2003 contract. It was agreed between the city and WMI several months ago that we would continue under the provisions of that contract until an amended agreement could be approved.</p> <p>Key points of the proposed amended agreement, which would include a five (5) year renewal, are as follows:</p> <ol style="list-style-type: none"> <li>1. Residential rates will be set at \$14.30 per month and will include weekly pick up of a 96-gallon trash cart, a 64-gallon recycling cart (unless a customer formally requests a 96-gallon recycling cart). <ul style="list-style-type: none"> <li>• Small brush and bulky item pickup curbside will now be provided monthly. At present we provide 2 bulky items pick up times per year. Allowing small brush pick up once a month will give customers another means to dispose of yard waste without a full-scale brush pickup which the city provides each customer once per year without fee.</li> <li>• Household hazardous waste will be eligible for on call monthly pick up year-round instead of twice per year on a limited basis.</li> <li>• The new/expanded service provisions in #2 and #3 far exceed the services contained in our present contract at the same price per month.</li> </ul> </li> <li>2. The City will receive a 5% franchise fee on commercial accounts (as we do today).</li> <li>3. The residential rate will increase January 1, 2020 by 2% or by the CPI as agreed in the agreement, whichever is greater.</li> <li>4. WMI has stated that commercial rates for Boerne are not in line with the market or with their rates in other cities. They propose that Commercial rates increase January 1, 2020 by 5%, then on January 1, 2021 by 5%, and in 2022 by 3% or the CPI whichever is greater; 2023 and 2024 by CPI as per contract.</li> <li>5. Recycling must be conforming and not contain more than 27% of non-recyclables by January 1, 2020 or a notice and cost report will be sent to the city. The city may have to pay a percentage of the cost for handling, processing, and transporting non-conforming recyclables. <ul style="list-style-type: none"> <li>• We plan to initiate a robust educational program to meet this goal.</li> </ul> </li> </ol>
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- The recycling education program will begin immediately to ensure we are in compliance with recycling thresholds by January 1, 2020.

**LEGAL NOTE:**

- **Under what authority does a city regulate and provide solid waste service?**
- The primary authority for a city to regulate and provide solid waste service is found in Chapters 363 and 364 of the Health and Safety Code.
- Under Chapter 363, a city is: authorized to adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal (Tex. Health & Safety Code § 363.111(a)); authorized to prohibit the processing or disposal of city or industrial solid waste in certain areas (Id. § 363.112); required to ensure that solid waste management services are provided to all persons in its jurisdiction by a public agency or private person (Id. § 363.113); authorized to offer recycling service to persons in its jurisdictional boundaries and may charge fees for that service (Id. § 363.114); authorized to enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the city council (Id. §§ 363.116(a), 363.117 [setting out the various things a city may provide for in a solid waste management service contract]); and authorized to fund solid waste management services by various means (Id. § 363.119).
- Under Chapter 364, a city is: authorized to contract with certain other public entities or a private contractor to furnish solid waste collection, transportation, handling, storage, or disposal services (Tex. Health & Safety Code § 364.033); authorized to offer solid waste disposal service to persons in its territory, require the use of the service by those persons, charge fees for the service, and establish the service as a separate utility (Id. § 364.034); and authorized to enter into an agreement for the collection of unpaid solid waste disposal services fees (Id. § 364.037).
- **May a city award an exclusive franchise to a solid waste disposal company?** In citing *Browning-Ferris, Inc. v. Leon Valley*, 590 S.W.2d 729 (Tex. Civ. App.— San Antonio 1979, writ ref'd n.r.e.), the Texas Municipal League has traditionally advised that the answer to this question is “yes,” except in relation to grease or grit trap waste (see Health and Safety Code Section 364.034(f)).

	<ul style="list-style-type: none"> <li>• <b>Is a city required to follow competitive procurement procedures in order to contract for solid waste disposal services with a value of greater than \$50,000?</b> No. Texas cities must generally follow competitive bidding or proposal procedures if the city enters into a contract requiring the expenditure of more than \$50,000 in city funds. Tex. Loc. Gov't Code § 252.021. However, Local Government Code Section 252.022(a)(2) provides that a purchase necessary to preserve or protect the public health or safety of the city's residents is excepted from the competitive purchasing requirements. Though the statute does not expressly provide that the provision of solid waste disposal services falls within the Section 252.022(a)(2) exception, Texas courts have construed the provision in this manner. See, e.g., <i>Browning-Ferris, Inc. v. City of Leon Valley</i>, 590 S.W.2d 729 (Tex. Civ. App.—San Antonio 1979, writ ref'd n.r.e.) (construing statutory predecessor). For example, in the <i>City of Weslaco</i> case discussed above, the court held "that a competitive bid for the franchise in question was not required."</li> </ul> <p><b>No charge services to the City:</b></p> <ul style="list-style-type: none"> <li>• WMI will continue to provide roll-off containers for 5 City sponsored events per year at no charge.</li> <li>• WMI will continue to provide for fall and spring clean-up events at no charge.</li> <li>• WMI will continue to provide containers for city buildings and facilities as designated in Exhibit D at no charge.</li> </ul> <p>We have included the <b>proposed draft of the amended agreement</b> for Council's information and will further review with you at the meeting on Tuesday evening. If the final amended agreement is revised then revisions to the final amended agreement will presented to Council at the meeting.</p>
<b>COST</b>	None
<b>SOURCE OF FUNDS</b>	N/A
<b>ADDITIONAL INFORMATION</b>	N/A

This summary is not meant to be all inclusive. Supporting documentation is attached.