

MINUTES

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
MEETING OF THE BOARD OF DIRECTORS
September 22, 2022– 2:00 p.m.
Via Zoom Tele or Video Conference Only**

Call to Order: 2:10 PM

1. Call to Order/Roll Call

Agency	Present	Absent	Agency	Present	Absent
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto		X	San Mateo		X
Foster City	X		County of San Mateo		X
Hillsborough	X		West Bay Sanitary District	X	
Menlo Park		X			

All Members and public participated by Zoom Video or Conference Call

2. Public Comment

Persons wishing to address the Board on matters NOT on the posted agenda may do so. Each speaker is limited to three minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting. If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time. **Speakers may also submit comments via email prior to the meeting by sending those comments to rethinker@rethinkwaste.org.**

None

3. Executive Director's Report

Executive Director La Marian welcomed everyone to the meeting, and gave the following updates:

- RethinkWaste Fellow Raquel Asi has left the Agency for a job with Republic Services in Fairfield as a Waste Zero Specialist.
- *Zolly versus the City of Oakland* is a current legal claim, not an official case yet, that could affect jurisdiction's ability to secure franchise fees as a tool to offset solid waste program administrative costs. If the court's ruling results in an unfavorable ruling, it will - limit or eliminate California city's ability to collect franchise fees for solid waste services because they will be defined as an illegally imposed tax. Next week Staff Carter and Counsel Savaree will attend a workshop on how this might affect our Member Agencies and will provide analysis via confidential memo to the Member Agencies.
- SB 1215 and AB 2440 are both SBWMA-sponsored battery legislation that have been signed into law by the governor.
- AB 1985 is the third piece of the legislation the Agency sponsored during this session. It puts into place a two-year delay to the procurement requirements for SB 1383. He noted that this decision has mixed

feelings in the industry, as the sheer amount of procurement required is staggering, and the amount hasn't changed just the program's implementation timing has been pushed back.

- The Board calendar for the remainder of the year includes 1. the October 27 study session on the budget and site optimization study findings and 2. the November 17 board meeting.
- If the Board approves action items on today's agenda items 5A and 5B, the November 17th board meeting will be held at Silicon Valley Clean Water's offices located at 1400 Radio Road, Redwood Shores. This meeting will be conducted in a hybrid format.
- The truck maintenance building roof replacement project that was approved in June was just completed on time and a little under budget.
- The MRF Admin roof replacement project will be starting in the next few days.
- The long awaited MRF wall repair project will be completed during the first few weekends in October.
- Staff has been meeting with Member Agencies as they discuss anticipated long term operational costs of the entire solid waste handling system. He noted if any other member agencies would like to have this discussion to reach out to staff.
- Relatedly, he encouraged member agencies to consider adding a 4-5% additional adjustment into their 2023 rates to anticipate the significant impacts of the new operations agreement that will take effect January 1, 2024, to soften the blow over a two-year period. This adjustment is estimated to be a 10% rate impact in 202.
- Staff is working to start a new self-insurance program called a captive, that would give the agency more control over escalating insurance premium costs. The Finance Committee recently discussed setting up a captive insurance plan in concept, and now the insurance broker needs to come back to the committee with agency-specific financial modeling so they can make a final recommendation to the board.

4. Approval of Consent Calendar

Consent Calendar item(s) are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Board, staff or public request specific items be removed for separate action. *Items removed from the Consent Calendar will be moved to the end of the agenda for separate discussion.*

- A. Approval of the Minutes from the June 23, 2022, Board of Directors Meeting
- B. Resolution Approving Contract Amendment #2 with HF&H Consultants not-to-exceed \$62,665 for SBWMA Operating Agreement RFP Technical Support
- C. Resolution Approving an Updated Conflict of Interest Code
- D. Approval of Quarterly Investment Report for the quarters ending March 31
- E. Approval of Quarterly Investment Report for the quarter ending June 30

Member Brownrigg commented that the Finance Committee should agendaize a discussion of the investment portfolio in light of the current interest rates.

Motion/Second: Froomin/Brownrigg

Roll Call Vote: 7-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo				X
Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			
Menlo Park				X					

5. Administration and Finance

- A. Resolution Finding that meeting of the Board of Directors Via Teleconference protect against the ongoing and imminent Health and Safety risks posed by COVID-19 and determining that all such

meetings will continue to be held by teleconference pursuant to California Government Code Section 54953(e) or whether meetings of the Board and Standing Committees should be conducted in a hybrid format or in person beginning in October 2022

- B. Resolution Approving a Board Meeting start time change to 3:00PM, and a location change to the Silicon Valley Clean Water Administrative Offices

Items 5A and 5B are related and the board discussed as one item

Executive Director La Mariana gave an overview of the staff reports.

Counsel Savaree further explained that there are a total of three resolutions. If the board decides to stay virtual there is a resolution for that option, if the board decides to go forward with a hybrid meeting option there is a resolution for that, and if the board wants to go back to completely in person, they would adopt neither resolution. The second item (5B) is linked, because if the board decides to move to hybrid meetings, then the room at Silicon Valley Clean Water (SVCW) has the technology available to conduct hybrid meetings, and the meeting time needs to move to 3PM due to parking concerns.

Member Rak asked if it was possible to start with a hybrid meeting at a future date.

Counsel Savaree answered yes the board would simply vote to move to hybrid at a future meeting.

Member McCune commented that the virtual meeting is a much more efficient use of everyone's time, and he would like to stay virtual as long as possible.

Member Dehn asked if it was a separate vote on start time.

Counsel Savaree answered yes.

Executive Director La Mariana commented that staff recommends three meetings each year to be in person (the February Board retreat; the October Budget/CIP Studysession; and the final Board meeting of the year in November).

Chair Aguirre commented that it would be nice to have the option of starting for some members in person and those that wanted could stay virtual, but she was open to either option.

Member Froomin offered a compromise where in-person meetings are in February, October and November starting now, so that the next two meetings would be hybrid this year but in 2023 only those three meetings would be hybrid. Then look at again in a years' time to see how it's working.

Member Brownrigg commented that anyone who wants to would still be able to dial in to a hybrid meeting. He worried about the technology more than choosing the type of meeting.

Chair Aguirrecommented that meeting at SVCW is an interim solution, when the administrative staff moves the meetings will move, but because the technology for hybrid meetings isn't available in San Carlos, an alternate location where the technology already exists is required. But the end goal is to find a place that will accommodate all of the above.

Member Rak suggested that the study session in October remain virtual, and that the November meeting be the first hybrid meeting at SVCW.

Member Froomin made a motion to move resolution 2022-43 to start in November

Member Rak Seconded the Motion

Member Froomin amended the motion to include that the motion also move the November board meetings to SVCW and the start time to 3PM

Member Rak seconded the amendment

Roll Call Vote: 7-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo				X
Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			
Menlo Park				X					

Member Rak made a motion to approve resolution 2022-42 to maintain hybrid meetings through October 2022

Member Brownrigg seconded the motion

Roll Call Vote: 7-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo				X
Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			
Menlo Park				X					

6. Collection and Recycling Program Support and Compliance

- A. Resolution Approving the SBWMA Final Report Reviewing the 2023 Recology San Mateo County Compensation Application

Staff Mangini gave a PowerPoint presentation reviewing the 2023 Recology Compensation Application, and the SBWMA staff and third-party review process.

There were no questions.

Motion/Second Rak/Froomin

Roll Call Vote: 7-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo				X
Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			
Menlo Park				X					

- B. Recology’s Request for COVID-19 Pandemic Related Cost Special Compensation

Item 6B was discussed after 7A and 7B, and was the meetings final discussion item.

Staff Mangini gave an overview of Recology’s request for Covid related expenses not included in the compensation application. He noted that staff is seeking direction from the board and are planning to bring a decision item back to the board after getting direction today.

Evan Boyd General Manager of Recology San Mateo noted that Recology is requesting reimbursement of costs related to Covid but noted that the staff report characterizes the request as a catastrophic event, but really the request is based on a change in law section 11.05. California supplemental paid leave due to Covid (SB 114) is about two thirds of the request, and the remainder is additional PPE and cleaning equipment to meet state and local agency Covid recommendations. These costs were not foreseen in the amended and restated franchise agreements but were required expenses to continue with these essential services. He reassured the board that these are not costs that Recology continues to incur.

Member Rak asked if the costs of cleaning supplies and cleaning the trucks was more than what is normally done for usual cleaning because of additional requirements mandated due to Covid.

Evan Boyd commented that a service cleans the Recology trucks inside and out once per week, during Covid we were required to clean nightly. A crew cleans and disinfects the inside of the trucks nightly. Cleaning of the truck exteriors are not reflected in these costs.

Member Rak asked what happens regarding truck cleaning when a driver gets Covid.

Evan Boyd answered that daily cleanings are no longer required by Covid guidelines so Recology is no longer doing cleanings daily. If a driver has worked and then tests positive that one truck is cleaned by internal staff, so those cleaning costs have not recurred over time as Covid has diminished.

Member Fromin asked why these costs aren't included in the annual compensation or budget discussion. These costs were experienced in the middle of 2020, so it seems that should have been known for 2021, and he asked if this was the only way to address these types of expenses.

Staff Mangini answered that this is an unknown item, and there was no way for SBWMA staff to know that Recology was still having Covid costs. Supplemental sick leave is a new law that went to effect in April.

Evan Boyd added that California supplemental sick leave was retroactive legislation enacted by the State of California to cover January 1 to September 30, 2022. Companies are obligated under state law to pay an additional 80 hours of sick leave related to Covid. There was no way to plan for that.

Staff Mangini added regarding the other costs, under the franchise agreements with Recology, it stipulates that any additional compensation requests for expenses outside the compensation application process will be considered after Recology has incurred those costs.

Counsel Savaree said staff is preparing to bring this item back to the next board meeting for consideration and action, so staff is seeking feedback on any additional information or documentation you may need to give staff direction for that action. She also noted that Recology is relying on a different section of the Franchise Agreement than what is noted in the staff report, so that will be addressed in the staff report that comes back to the board for action.

Chair Aguirre asked how a budget is prepared when Recology is required to come after the expenses have incurred to request compensation.

Executive Director La Mariana said if this request is approved it would be variance to the budget, which happens incredibly infrequently.

Chair Aguirre answered but this is the second year of this request, so how does the Agency better prepare for these types of requests.

Staff Mangini commented that if Recology's request is approved it would become part of the revenue requirement, which is why the request is considered at this time, so member agencies could set their rates to cover the revenue requirement including this additional cost.

At 3:59PM the quorum was lost and the meeting was adjourned, this topic will be continued next meeting.

7. Shoreway Operations and Contract Management

A. Resolution Approving the SBWMA Final Report Reviewing the 2023 South Bay Recycling Compensation Application

Staff Mangini gave an overview of the staff report. He noted SBR's compensation in volume based on a per ton amount. The CPI based increase this year is 6.5%. He added that there is one piece of SBR's compensation that is not CPI based and that is the VRS contract which is more of a cost plus model.

There were no questions.

Motion/Second Brownrigg/Froomin

Roll Call Vote: 7-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo				X
Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			
Menlo Park				X					

B. Approval of a Contract with Walschon Fire Protection LLC In A Not to Exceed Amount of \$136,668 and establishment of a 10% contingency to use, if necessary, to Repair the Fire Suppression System at MRF and Transfer Station Buildings

Staff Gans gave an overview of the staff report and the proposed resolution. He noted that fire inspection has historically been performed annually and is usually minimal cost. In the past this work has been done by Cosco fire, but they have been un-responsive this inspection year, and staff moved to a different vendor to complete the work quickly due to upcoming fire inspections by the insurance companies. Staff expected the work to cost roughly the same, but when a quote was received the cost has more than doubled. The new company gave the explanation that all the sprinkler heads need to be replaced due to dirt and dust over the years. Nearly 1,000 sprinkler heads need to be replaced. Staff is looking into options but due to both safety and insurance carrier concerns this work is essential.

Member Froomin commented that he had talked to staff about this item before the meeting and learned that the current sprinkler heads are between 13 to 18 years old. He noted that due to the time crunch and the fact that the sprinkler heads are likely at the end of their useful life, he's in favor of moving forward. But staff really needs to look at the long term solution for sprinkler heads getting them cleaned or protected so we don't have this type of replacement on a regular basis.

Executive Director La Mariana agreed with Board Member Froomin, and commented that Cosco's uncharacteristic unresponsiveness left staff and the facility in the lurch with a big time crunch to get these inspections completed before the upcoming insurance carrier's site inspections.

Member Froomin made a motion to approve the contract with Walshon Fire, and directed staff to find a long term solution to the sprinkler heads.

Member Rak seconded the motion

Roll Call Vote: 7-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo				X
Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			
Menlo Park				X					

C. Staff Update on Operations Agreement RFQ Process and Parallel Negotiations

Agenda Item 7C was discussed before agenda items 5, 6, 7A and 7B.

Executive Director La Mariana gave an overview of the status of Shoreway Operations Agreements RFQ process. He introduced Rob Hilton of HF&H Consulting, the negotiations lead.

Rob Hilton of HF&H Consulting gave a PowerPoint presentation highlighting the status of the Operations Agreement RFQ process and parallel negotiations including key areas in the current operations agreement that need to be modified. He noted that with either proposer it will be at least 60%+ in costs over the current contract which will translate into a 10% increase to rate payers. He added that the biggest factor in this increase is labor costs from both proposers. He noted that the local enforcement agency, the local fire departments and SBWMA staff all think more staff is needed to run the facility.

Member Brownrigg asked for clarification on the cost-based adjustment noting that this contract feels like it's moving towards a cost-plus contract, and he remembers the last cost-plus based contract being very bad for the Agency.

Rob Hilton answered that the proposed compensation mechanism is 80% of the fee for service model that the current contract uses, but additionally installs a couple of events to check in on costs and take action around reconciliation. Unlike the cost-plus model this model holds the contractor to their estimates regarding hours, numbers of pieces of equipment, etcetera, but allows for changes in unit costs.

Member Brownrigg thanked HF&H for that description and commented that he stands in support of the vocational rehabilitation services workers at the facility, and he is in support of keeping the program in place.

Member Rak noted that he thought this cost structure might help smooth out differences and requests for changes and over time and allow for the SBWMA to budget better. He asked for clarification on the labor contracts part of the operations agreement.

Rob Hilton answered that there are three different collective bargaining agreements, two of which will be negotiated after this contract goes into effect, and one in between this negotiation and the start of the contract. So, there is some uncertainty on the part of both proposers about what the initial reset will be, as well as what the steps will be each year of the agreement, so that is part of the reason for looking at the unit factors at some point in the future of the contract to look at what has happened with labor.

Member Rak asked if the contract considers changing labor needs with potential future automation at the site.

Rob Hilton answered that this is part of the discussion around MRF Phase II. That is the known event in the future where the SBWMA and the contractor will look at the agreement and evaluate efficiencies and cost effectiveness. He also added that there are some parameters in the bargaining agreement that create barriers to reducing headcount in significant ways, that must be respected, but it will likely create an opportunity to do more with the available head count.

Executive Director La Mariana commented that any specific upgrade to the facility would come to the board for consideration and include a cost benefit analysis including any impact on labor. He noted that both proposers have signed MOUs to the fact that they will continue to honor the current labor agreements in the new operating agreement.

Staff Gans added that labor savings through automation is definitely something staff is looking hard at. There is a provision in the current labor agreements signed by SBR the essentially prohibits layoffs. So even if labor saving features are installed head count cannot be reduced.

Member Rak asked if infrastructure costs for electric trucks has been included in the negotiations.

Executive Director La Mariana with this contract there's a planned 100% new fleet replacement for Recology. The current fleet is at the end of its useful life, and the current trucks will not be CARB compliant.

Tracy Swanborn with HF&H noted that Rob Hilton had to drop off our Zoom meeting but added with regards to electric vehicles, Recology currently has a proposal for some hybrid vehicles. Based on successful pilot equipment results, they're also considering adding some alternative fuel vehicles in the future that are being contemplated in the site optimization study. HF&H is considering all of those costs as they move forward with negotiating the operations agreement.

Member Froomin asked regarding the true up of labor costs in year four and possibly two other times, what safeguards are in place for the Agency to ensure that the new contractor takes ownership of the responsibility to negotiate fairly with the CBA to keep costs reasonable, and not just pass costs on to the rate payers.

Executive Director La Mariana noted this is a serious concern on the part of staff and has been a hard negotiation item to both be fair and hold the line.

Tracy Swanborn added that this is a big concern on both sides, it's a big risk for the proposers. She noted that proposers will be negotiating labor in 2023, and they are taking a big risk that they are going to have to live with those numbers until year four of this agreement. She also noted that they are very sensitive to the other CBAs negotiated by other local agencies in the area because there can be a ripple effect.

Member Froomin asked how long the CBAs typically are. And he asked if the labor cost is a pass-through cost in the agreement, why isn't the agency the one doing the negotiations. Lastly, he noted that he would like to see all of the positions not guaranteed as the contract moves forward, is there a way to protect only the current contract's positions, but not guarantee the new positions going forward.

Executive Director La Mariana answered that they are typically five years. And he added that the employees are the employees of the contractor not the Agency and then it would bind the contractor to terms that would have been negotiated by a third party. He noted he would discuss the possibility of not guaranteeing all the positions internally but didn't know if that would be possible.

Member Brownrigg commented that he wanted to endorse member Froomin's suggestion that additional jobs not necessarily be guaranteed, that promise feels like there is no incentive to respect efficiency. What incentive if any does the contractor have to negotiate a fair outcome if they just get to pass on those costs.

Tracy Swanborn answered the way it is currently written there would be an adjustment in year four to account for the negotiations that will take place after this agreement is signed, and then after that it would roll back to CPI adjustments the way it is in the current agreement. And, either party could initiate one additional cost review during the remainder of the term as well. She added that the negotiating team is trying to walk the tightrope between the current contract and offering the contractors some level of relief a few years down the line into the contract, and that the current operating agreement was structured in a similar way, that costs were passed through in the first few years of the contract until new CBA agreements were negotiated, then it rolled to CPI adjustments.

Member Froomin suggested being strategic with where the true up years are placed in the agreement, so the contractor is responsible for a year or two of what they negotiate with the CBA rather than truing up right after the CBA negotiation.

Executive Director La Mariana thanked the board for their feedback, and he will work on next steps with the committee.

8. Public Education Outreach and Legislation

No Items

9. Informational Items Only (no action required)

- A. 2022 Legislative Session Update
- B. Update on the Status of SB 1383 Implementation and Compliance
- C. 2022 Finance and Rate Setting Calendar
- D. Check Register Detail May - August 2022
- E. Update on Technical Support Contracts Issued by the SBWMA
- F. 2022 Meeting Planning Guide

10. Board Member Comments

11. Adjourn Quorum was lost at 3:59PM during discussion of item 6A. Item 6A will be continued at next meeting.