CAPITAL UPDATE

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TOP TEN POLICY ISSUES TO COVER IN YOUR FRANCHISE AGREEEMENT

The solid waste, recycling, and organics franchise is typically one of the largest contracts that cities enter into (about $2 million per year for a city of 10,000 households). It is also the one solid waste policy document that cities revisit on a regular basis when going out to bid or changing services. Therefore, it is important that city representatives maximize the effectiveness of their franchise agreements and carefully review all of the public policy impacts of franchise provisions. Be sure to leave plenty of time in your franchise renewal process for long-term strategic planning, council study sessions, and public workshops. Recycling and solid waste management is very near and dear to the hearts of the citizenry. It is something we all practice everyday. In fact, more people recycle than vote. The following is our list (by no means exhaustive) of the top ten policy issues to cover in your franchise agreement.

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10. Services. When renegotiating your franchise agreement or going out to bid, be sure to ask for all of the services you want (or may want in the near future). This is the one opportunity, every eight to ten years or so, to really get the latest and greatest of what the market has to offer.

The service provider will be costing out a system to amortize over a number of years. It is somewhat difficult to go back, midway through a franchise term, to add new features that will affect day-to-day operations, such as single-stream recycling, food waste composting, commercial recycling, construction and demolition debris processing, or other high value, big ticket items. You want to get these costs in your original bid price.

9. Materials. If you collect it, will they recycle it? Well, they won't recycle it if you don't specify it in your franchise agreement. Markets exist for many marginal materials such as mixed plastics, textiles, plastic bags, aseptics, and Styrofoam. Although these items may not represent a huge volume in your city's waste stream, they are the materials that residents like to be able to recycle. Many cities include these materials in their curbside programs and get them diverted. However, unlike aluminum and white paper, these materials require a net cost to recycle, and service providers won't want to include them unless the costs are recoverable in the service fees. Keep in mind that the bottle bill requires curbside operators to collect all containers that have redemption value, including #1 through #7 plastic bottles, in order to receive the curbside incentive payment.

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8. Commercial and Multi-Family Recycling. Recycling for commercial businesses and multi-family dwellings is often neglected or underemphasized in franchise agreements. Small and medium-sized businesses typically cannot generate enough recyclable materials to attract independent recyclers. Multi-family buildings require special attention and intensive outreach programs. To ensure that your businesses and multi-family residents get the services they need, you must spell them out in detail in your franchise agreement. For example, you could include a minimum level of recycling (such as weekly pickup of a 90-gallon container for mixed recyclables) for all businesses. These services could be included in the solid waste service fees and need not preclude businesses from using other recyclers for other materials (such as baled cardboard or white paper). Most businesses, even those that have extensive internal recycling programs, can benefit from weekly collection of additional materials, such as cans and bottles or mixed office paper.

7. Flow Control. Reserve the right to control the flow of solid waste by including a franchise provision that allows the city to direct waste to certain facilities. You may want to direct the collector to a facility or landfill, but they will have control over all of the franchise materials unless you specify otherwise. On the other hand, allowing open competition for source-separated recyclables could greatly benefit your commercial businesses. Notwithstanding the minimum recycling services described above, competition for large-scale recycling can improve service, give generators choices, and reduce rates.

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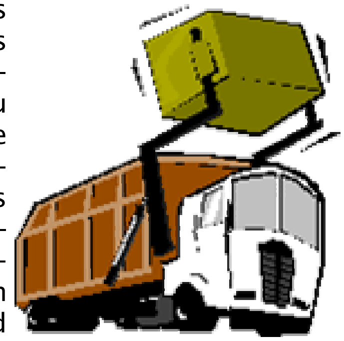
6. Debris Box Service. Many cities include debris box service in their exclusive franchise agreements. Open competition can reduce rates and improve service. However, whether your debris box service is exclusive or non-exclusive, you should still require incentives for recycling (such as differential franchise fees or minimum diversion requirements) and require construction and demolition debris recycling through generator or hauler requirements.



5. Reporting Requirements. Ask for what you need, when you need it (quarterly if you will look at it, otherwise annually). Tonnage information by generator sector; account information by customer class; and routing, billing, and service issues should all be transparent either through read-only access or periodic reports. You will want to have access to all of the customer data to make the next transition as smooth as possible.

4. Rate Review vs. Escalator. Rate reviews, where the city reviews company finances and determines allowable costs and profits, treat the solid waste franchise as a public utility and are appropriate for long-term or evergreen franchises. It's a matter of taste and how you want to spend your time. If you go out to bid fairly often (every seven or eight years), you might want the convenience of using an escalator, such as the Consumer Price Index (or a combination of indices), to adjust rates. The market will dictate what the base price will be. Rates would then be automatically adjusted without a rate review process. Reserve rate reviews for long-term contracts where using an index could get you out of whack with real costs. Rate reviews are not advisable for shorter-term market-driven contracts. Remember, they can always hide the costs better than you can find them.

3. Separating Contracts. Consider whether there are advantages to splitting up your

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franchise agreements into separate service contracts for disposal and collection or for solid waste collection and recycling and organics collection. Some cities have found that competition between multiple vendors leads to better provision service. Others have found that it's more costly to have separate agreements. Splitting disposal from collection enables you to negotiate long-term disposal contracts while allowing for shorter-term collection contracts. Some cities prefer the convenience of one package for all services.

2. "Free" Services. Many franchise agreements include provisions allowing for solid waste and recycling collection at city facilities at no cost. If your city takes advantage of these "free services," be sure that the other city departments (Parks and Recreation, Public Works, Facilities) are appropriately crediting the solid waste enterprise account. "Free" solid waste collection service can also reduce the incentive to recycle. Make sure that the city departments are appropriately motivated to reduce waste even when the service is "free." Carefully consider what you want to accomplish with "free" annual clean-up events. Many cities are transforming these trash fests into recycling events by requiring their vendors to divert 50 percent of all setouts or requiring diversion of specific materials (large prunings, appliances, mattresses, electronic waste, and reusable items). You might want to consider a community-wide garage sale in place of or in addition to community clean-up events.

1. Franchise Term. The length of the franchise term is one of the most important public policy decisions to make in your franchise agreement. The length of the term can affect: costs, the rate setting process, flexibility of programs, public input, and the political process. Long-term agreements are very valuable to service providers and, therefore, franchisees typically want as long a term as they can get. However, most equipment and many facility costs can be amortized cost-effectively over a seven- to eight-year period. Because solid waste management and recycling is a dynamic field, with innovations and service improvements available on an ongoing basis, shorter-term market-driven contracts have provided cities with cost-effective, flexible programs customized to their individual needs. Recently, many cities have seen rate reductions and increased services through competitive bidding of their franchise agreements. If you don't like your services, you can change them more frequently; if you like them, you can always extend them for a few extra years.

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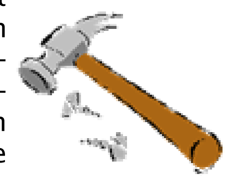
There you have it—our top picks and tricks. When you have a hammer, every problem looks like a nail. Our recent experience working with cities to implement recycling programs and increase diversion has shown us the importance of the franchise agreement as a tool for maximizing performance and getting what you want out of the programs in your control. Do not pass up the opportunity to review and revise your franchise agreement and solid waste ordinance whenever possible. Two years prior to the expiration of your franchise agreement is usually adequate time to conduct a thorough franchise, ordinance, and service review; conduct public workshops; and procure new services. Feel free to call us if you need any help.



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