



SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD – ELECTED OFFICIALS OR SENIOR MANAGEMENT STAFF?

SUMMARY

The South Bayside Waste Management Authority (SBWMA), also known as Rethink Waste, is a 12-member joint powers authority formed in 1982. Its membership is composed of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, San Mateo County (County), and the West Bay Sanitary District (collectively, Member Agencies). It is governed by a First Amended and Restated Joint Exercise of Powers Agreement (Restated Agreement) executed in 2005.

The mission of SBWMA is to provide cost-effective waste reduction, recycling, and solid waste programs to its Member Agencies and to oversee the Shoreway Environmental Center recycling facility (Shoreway) in San Carlos. It was formed so its Member Agencies could collectively negotiate more favorable rates for waste collection and disposal. SBWMA negotiates with and regulates the waste hauling provider and the operator of Shoreway.

SBWMA's Board of Directors (Board) is composed of one senior management staff member appointed by each Member Agency.

Shoreway was built, at significant cost (approximately \$17 million) in order to comply with state mandated waste stream diversion goals. It receives and processes recyclables, organics and garbage, and houses a new education center. The changes in waste disposal and recycling requirements have been followed by significant cost increases to customers.

In 2011, after Recology replaced Allied Waste as SBWMA's waste hauler and South Bay Recycling (SBR) became the operator of the new Shoreway recycling center, the public expressed concerns about service changes and waste hauling rate increases. An example of a service change is a change in the frequency of recycling pick-up from every other week to once weekly. In addition, there was confusion about the selection process used in selecting a new waste hauler. Much of the public does not fully understand the role of SBWMA in the waste hauler selection process.

Questions have been raised by some Member Agencies as to whether only senior Member Agency management staff should continue to comprise the Board or whether it should be composed of only elected officials from the Member Agencies' governing bodies, e.g. City Council members. As a result, a Blue Ribbon Task Force (Task Force) composed of Member Agencies began meeting in February 2013 to review the SBWMA governance structure. The approval of eight of the twelve Member Agencies is required to make changes to the SBWMA governance structure.

The 2012-2013 San Mateo County Civil Grand Jury (Grand Jury) finds public concern over rate and service changes has prompted a review of SBWMA's governance structure and that SBWMA's organizational structure is a complex issue not well understood by the public. The Grand Jury further finds that Member Agencies set their own rates that may include a variety of

fees and that only customers in the City of San Mateo receive bills that itemize charges. Finally, the Grand Jury finds that elected officials already have sufficient influence in SBWMA's decision making process and there is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

The Grand Jury recommends that the Member Agencies and SBWMA disseminate comprehensive information about SBWMA operations, its franchisees, and rate setting processes to its customers. In addition, it recommends that each Member Agency request that Recology provide detailed billing statements to the customers in the Member Agency's jurisdiction that disclose all fees, including those imposed by the Member Agency. The Grand Jury further recommends that Member Agencies continue the current practice of appointing only senior management staff to the Board in accordance with the Restated Agreement. Finally, the Grand Jury recommends that if the Restated Agreement is amended to change the Board membership to elected officials, then a technical advisory committee consisting of staff with technical experience in waste management be put in place.

BACKGROUND

SBWMA was formed in 1982 so that its Member Agencies could negotiate more favorable rates for waste collection, transfer, hauling, and disposal.

From 1982 until January 1, 2011, Browning-Ferris Industries (BFI) was the franchise waste hauler for SBWMA. Several years ago, Allied Waste acquired BFI and changed the name. On January 1, 2011, Recology became SBWMA's new franchise waste hauler. Since Recology took over, there have been service changes and rate increases, leading to public concern and the call by some for a change in the composition of the Board from only Member Agencies' senior management staff to only elected officials.

With some Member Agencies questioning who should represent them on the Board, the Grand Jury decided an investigation into SBWMA, its governance, and operations was warranted.

METHODOLOGY

Documents

- Report from the City Manager of Redwood City to the City Council of Redwood City dated December 3, 2012
- A letter of invitation from the Redwood City Mayor to Mayors/Directors of the Member Agencies dated December 7, 2012
- SBWMA budget information
- Franchise agreements/contracts (www.rethinkwaste.org)
- San Mateo Daily Journal, Thursday, May 9, 2013
- April 2, 2013, Task Force meeting agenda
- Minutes of Task Force meetings

Site Tours

- The Grand Jury was given a guided tour of the educational facility at Shoreway

Interviews

- The Grand Jury conducted interviews with SBWMA staff and Board members, representatives of Recology, South Bay Recycling, a Redwood City Council member representing that city's Utility Committee, and a member of the Task Force.

DISCUSSION

SBWMA

SBWMA was formed in 1982 and is now governed by the Restated Agreement. It was established so that Member Agencies collectively could negotiate favorable rates for waste collection, transfer, hauling, and disposal at a disposal site. One of its principal goals is to provide cost effective waste reduction, recycling, and solid waste programs to Member Agencies through franchised services and other recyclers. The goal is being achieved.¹

Another principal goal is to sustain the minimum 50% diversion of waste from landfills as mandated by California State Law, AB 939.² The required diversion percentage will increase to 75% by 2017, which will necessitate additional programs and education for residents and businesses.

According to information provided to the Grand Jury, SBWMA's administrative operations were initially performed by San Carlos staff until the Board hired a day-to-day operations manager in 2006.

BFI built a transfer station in San Carlos in 1984. It collected the waste from its residential and business customers, transferred it into larger trucks at the transfer station, and transported it to the Ox Mountain disposal site in Half Moon Bay. Use of a transfer station was an important change because previously, trucks traveled to Ox Mountain on Highway 92, a narrow and busy roadway. The new transfer station put fewer trucks on the road and resulted in a more efficient operation. BFI/Allied Waste was the contractor for SBWMA since it was established in 1982 until 2011. BFI/Allied Waste was also and still is the owner and operator of the Ox Mountain disposal site.

The Member Agencies of SBWMA issued revenue bonds in 2000 to purchase the transfer station from Allied Waste. At the same time, SBWMA also purchased a recycling facility located adjacent to the transfer station.

The Restated Agreement, adopted in 2005, clarified that Board membership is limited to senior management staff, i.e., the following County, district, city, or town positions or their equivalent:

¹ The 2008-2009 Grand Jury report "TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority" states that Rethink Waste provides the lowest rates in the Bay Area.

² SBWMA website, <http://www.rethinkwaste.org/> (April 14, 2012).

- Manger or assistant manager
- Finance director or assistant finance director
- Public works director or assistant public works director
- Environmental director or assistant environmental director³

After hiring SBWMA's manager, the Board developed a model for more efficient waste operations to comply with state law beginning in 2011 and issued requests for proposals (RFPs) from waste haulers and operators of the new recycling facility.

Through the RFP process, waste haulers and recycling facility operators competed for the multi-year contracts and presented their proposals to each of the governing bodies of the Member Agencies. The elected officials of each Member Agency told its Board representative which companies the Board should select. Recology was selected as the waste hauler as a result of this process. SBR was selected to operate the recycling center. Both contracts were for 10 years commencing January 1, 2011

Shoreway

Shoreway serves as a regional solid waste and recycling plant for the receipt, handling, and transfer of solid waste and recyclables collected from the SBWMA service area, (southern and central San Mateo County as shown on Appendix A). SBWMA owns and manages Shoreway and, as part of the master facility plan, built a state-of-the-art environmental education center in the recycling facility adjacent to the transfer station.

Residential and commercial solid waste and recyclable and organic materials collected by the franchise hauler, Recology, are taken to Shoreway for processing, staging and shipment. In addition, the public can bring material to Shoreway to be recycled or taken to the disposal site. Construction material can also be dropped off for recycling.

Elected officials of the Member Agencies approved construction of a new recycling facility at the transfer facility site in San Carlos so that state-of-the-art equipment could process recyclables as required by law. On January 1, 2011, SBR began operating the Shoreway recycling plant under a 10-year contract with SBWMA. SBWMA adopted the trade name "Rethink Waste." As Rethink Waste, SBWMA has been favorably recognized for its innovative waste reduction, recycling programs, and facility infrastructure.

Some interviewees questioned the need for an education center which was built to educate the public about waste diversion. Schools are given guided tours through the Shoreway facility. Guided tours are also available to other groups and the general public.

Most of the individuals interviewed by the Grand Jury, admittedly involved in the process, thought the education center to be a valuable resource. SBWMA management estimates it costs \$150,000 annually to operate the education center. With 93,000 residential and 10,000 commercial SBWMA customers, the cost of the education center is less than \$1.50 per customer per year.

³ Restated Agreement Section 8.1.

Revenue Sources

SBWMA receives revenue from several sources: Tipping fees from Recology (a charge for the tonnage brought to Shoreway); proceeds from the sale of recycled material; and fees charged for materials brought to Shoreway by the public.

Collection Rates for Customers

Collection rate increases have been controversial and confusing because most Recology customers do not realize that each Member Agency sets collection rates within its jurisdiction. Rates are different for each Member Agency. For example: a 20-gallon cart in Foster City costs \$11.82 per month but in Hillsborough the same cart costs \$42.40.

There are many reasons for differences in rates among Member Agencies. For example:

- Each Member Agency negotiates its own contract with Recology for the services desired by it within its jurisdiction.
- Member Agencies may select different services. For example, one Member Agency opted to have recyclables picked up weekly rather than bi-weekly.
- Geographic differences in Member Agencies' jurisdictions can affect cost. Some locations are flat (less expensive to service) while some have narrow streets or hills (more expensive to service).
- Member Agencies may add additional fees such as franchise fees, street sweeping fees, vehicle impact fees, and rate stabilization fees.
- As explained below, amounts owing to Allied Waste at the end of its contract varied among Member Agencies.

In 2011, when the contracts with SBR and Recology began and the contract with Allied Waste ended, there was a balance of about \$11 million dollars owed to Allied Waste by the Member Agencies. Allied Waste had a cost plus contract with SBMWA, which meant it calculated costs and added a percentage for profit. Each year as costs continued to rise, Member Agencies owed more to Allied Waste. Some Member Agencies rolled over the balance due to the next year instead of raising rates. When the Allied Waste contract ended, however, these Member Agencies had to pay the remaining balance. Some paid the remaining balance from their own funds, while others raised customer rates. There were different amounts owed by Member Agencies, which also contributed to different rates among Member Agencies.

Another cause for increasing rates is that the Ox Mountain dumping facility increased its rates because less waste was being delivered to it as a result of increases in recycling.⁴

Yet another factor contributing to rate increases after Recology became the waste hauler was the labor contracts negotiated by Allied Waste before its contract ended but which remained binding on Recology. These contracts increased labor costs.

⁴ Ox Mountain has fixed operating costs that must be covered irrespective of the amount of waste disposed there. Thus, lower usage can result in a higher per unit cost.

Rate and Billing Information

Recology bills the residents and commercial businesses it serves and then pays the Member Agencies their fees. In all Member Agencies except for the City of San Mateo, Recology's billing statement to the customer contains only one charge and does not itemize other city charges. City of San Mateo customers receive an itemized statement showing the following additional city charges: waste, street sweeping, and landfill closure fee. Recology states it does this for the City of San Mateo because the City requested it. Recology can do this for other Member Agencies upon request. Waste collection rates are very complex. Itemizing the bill would remove some of the confusion and mystery from rate charges. During its investigation, the Grand Jury found that most Member Agencies' websites did not give detailed information on collection rates.

Governance of SBWMA

Since SBWMA was established, there has been discussion by some local lawmakers regarding whether elected officials or Member Agency senior management staff should be on the Board. Currently, only senior management staff serves on the Board.

Section 8.1 of the Restated Agreement states:

The SBWMA shall be governed and administered by a Board composed of one Director from each member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each member must select its Director or the Director's designee alternate from the following positions:

- County, District, City or Town Manager, or the equivalent position
- County, District, City or Town Assistant Manager, or the equivalent position
- Finance Director or Assistant Finance Director, or the equivalent position
- Public Works Director or Assistant Public Works Director, or Environmental Programs Manager, or equivalent position⁵

Since adoption of the Restated Agreement, only senior management staff has served on the Board. The Grand Jury found through its interviews that there might be two reasons for this type of governance:

1. Member Agencies wanted to create a "buffer" between elected officials and waste contractors.
2. Most city councils showed little interest in having their members serve on the Board because waste disposal was not a "hot issue." In 1982, the waste industry was less complex than today - there was one contractor, BFI, which collected the waste and transported it to the disposal site that it operated.

⁵ 2008 San Mateo County Civil Grand Jury report on SBWMA, http://www.sanmateocourt.org/documents/grand_jury/2008/trashtalk.pdf

Through its investigation, the Grand Jury discerned two principal questions pertaining to SBWMA governance:

1. ***Is there a need to change the governance structure to have only elected officials or a combination of elected officials and senior management staff on the SBWMA Board?***

This question implies that elected officials might be able to provide better oversight and direction than the current Board composed of only senior management staff from a variety of departments. The answer to the question is determined by the level of operational expertise each Member Agency desires its Board representative to possess. If a higher level of expertise is desired, then the Board should be composed of senior management staff; if not, elected officials should be seated on the Board.

2. ***Were elected officials involved in the process that selected Recology as the new franchise waste hauler?***

This question implies that elected officials were not sufficiently involved in the selection of Recology. According to the following abbreviated timeline, however, elected officials were significantly involved with the decision to contract with Recology:

- September 2007 - Member Agencies approved release of the RFP for a waste hauler
- October 2008-February 2009 - Member Agencies approved the SBWMA's recommendation to select Recology
- May-June 2009 - SBWMA staff briefed the governing bodies of Member Agencies on the implications of key contract decision points (e.g., default cart-sizes, optional programs, performance bond)
- June 2009 – The governing bodies of Member Agencies confirmed key contract decisions
- June-July 2009 - Member Agencies commenced review of draft franchise agreements
- August 2009-February 2010 - Member Agencies executed franchise agreements as approved by their governing bodies

In 2005, the Restated Agreement, including the following amendments, was submitted to the Member Agencies for approval:

1. Establishing criteria to insure that only senior management Member Agency staff serves on the Board in lieu of the prior practice that allowed any agency staff appointed by each agency's City Manager, County Manager, or General Manager to serve.
2. Requiring that key Board actions (acquisition of real property, disposal of real property, entering into or amending franchise agreements for operation of facilities, and issuing or refinancing bonds) be authorized by a 2/3 vote of the governing bodies of the Member Agencies in lieu of action solely by the Board.

Legal counsel for SBWMA noted that the transfer of power from the Board to the governing body of the Member Agencies leaves to the elected officials of each Member Agency the most important decisions with the greatest structural and/or financial implications.⁶

⁶ San Carlos City manager's report to the city council, dated January 28, 2013

At the time the Restated Agreement was under consideration, Belmont suggested that elected officials serve on the Board. In addition, a member of the Board of Supervisors and a member of the state legislature have called for elected officials to comprise the Board. A 2008-2009 Grand Jury report on SBWMA recommended that elected officials comprise the Board. Most recently, Redwood City organized the Task Force to study the feasibility of a structure change for the Board.

There are many models for waste collection boards around the state. Some are composed of elected officials only, some of staff members only, and some are a combination. Most individuals interviewed by the Grand Jury thought the Board should be composed of all elected officials or all senior management staff. They thought a mixed Board would not work as well.

Advantages and Disadvantages of Elected Officials Serving on the Board

The Grand Jury learned during its interviews that elected officials believe their perspective on issues such as collection rates would be more like that of a citizen than the perspective of a professional administrator. Having elected officials on the Board may give the public a sense that there is more direct control over the waste management service. Elected officials may be more proactive regarding informing the public and, given that they may be more sensitive to public scrutiny, they may be more likely to make decisions of which constituents approve.

Elected officials often have other careers and are generally very busy. Their time available to devote to waste management matters could thus be more limited, a disadvantage. Elected officials also have limited and variable terms of office thereby disrupting the continuity of the Board. Interviewees stated that there is a steep learning curve for new Board members. Several interviewees stated that elected officials might have outside pressure or influence from various groups in making their decisions. There also may be a need for more staff at SBWMA to assist elected official Board members, which might increase cost.

Advantages and Disadvantages of Staff Serving on the Board

Senior management staff provides professional management with experience in developing budgets, contracts, and long term planning. They generally have more time to devote to the duties of the Board because service on the Board is part of their “job description” and the time is anticipated and allocated. Many senior management staff members have served on the Board for several years and are very knowledgeable about SBWMA. Senior management staff has less pressure on it from outside influences. Senior management staff is more likely to make a sound business decision rather than a political one. Staff generally looks at the most efficient way to operate SBWMA

A possible disadvantage of senior management staff serving on the Board is inadequate communication between such staff and their governing councils. Interviews suggested that elected officials do not always have the information from the Board they feel they need. This is especially true in connection with setting collection rates.

Task Force Recommendation

The Daily Journal reported on May 2, 2013, that the Task Force had voted to recommend to the governing boards of the Member Agencies that the Restated Agreement be amended to change the composition of the Board from senior management staff to an elected official from each governing body.⁷ The Task Force also recommended establishment of a technical advisory committee similar to that in place for the County Library joint powers authority.⁸ Each of these governing bodies will discuss and vote on the recommendations. The approval of eight of the twelve Member Agencies is required to amend the Restated Agreement.

One member of the Task Force advised the Grand Jury that the reason for the recommended change was that elected officials are required to vote on rate increases predicated on a budget approved by the Board, not the governing boards of the Member Agencies. This Task Force member also stated that the Task Force was of the view that elected officials are more sensitive to “fees” than senior management staff. This Task Force member was, however, unaware that many Member Agencies were including undisclosed fees and charges in waste service bills.

While this argument has some merit, the Grand Jury believes better communication between the Board member and his/her Member Agency can address the concern that the Member Agency does not have sufficient oversight of the SBWMA budget. Further, this concern is outweighed by the enhanced expertise and reduced exposure to outside influences provided by a Board composed of senior management staff. Therefore, after considering the evidence, the Grand Jury finds no compelling reason to change the current SWBMA governance structure from only senior management staff to only elected officials.

FINDINGS

- F1. One reason behind wanting to change the composition of the Board appears to stem from the public’s concern over rate increases and service changes.
- F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.
- F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.
- F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.
- F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.
- F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

⁷ http://archives.smdailyjournal.com/article_preview.php?id=1770056 (May 13, 2013).

⁸ Interview with Task Force member.

F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.

RECOMMENDATIONS

The 2012-2013 San Mateo County Civil Grand Jury recommends that, each *Member Agency of SBWMA* do the following:

- R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.
- R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.
- R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.
- R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.

The Grand Jury recommends that the *SBWMA Board* do the following:

- R5. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process through a variety of media.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests the following to respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- SBWMA Member Agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, City of San Mateo, San Mateo County, and West Bay Sanitary District)
- South Bayside Waste Management Authority Board of Directors

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

APPENDIX A

SBWMA Service Area



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