



DATE: December 8, 2016

TO: Alameda County Recycling Board

FROM: Tom Padia, Deputy Executive Director

SUBJECT: Accumulated Measure D Fund Balance Exceeding Policy Threshold – Approval of City of Newark Expenditure Plan

SUMMARY

The Recycling Board has adopted rules regarding municipal eligibility to receive further disbursements of per capita Measure D revenues once a specified unspent fund balance threshold is exceeded. The municipality must submit, and the Recycling Board must approve, an Expenditure Plan explaining how the accumulated funds will be spent down below the threshold, before the municipality will be eligible to receive further Measure D per capita monies. The City of Newark reported an unspent fund balance at the end of FY 15/16 that exceeds the current policy threshold, and has submitted the attached Expenditure Plan for Board consideration. Staff recommends Recycling Board approval of the Expenditure Plan.

DISCUSSION

The County Charter (Measure D) directs that 50% of Recycling Fund revenues (from the \$8.23 per ton landfill surcharge) "...shall be disbursed on a per capita basis to municipalities for the continuation and expansion of municipal recycling programs." (Subsection 64.060(B)(1)).

In 2006 the Recycling Board adopted Resolution #RB 2006-12 establishing rules regarding municipal accounting of Measure D revenues and expenditures, and eligibility to receive further disbursements when a specified unspent fund balance threshold is exceeded. In November 2014 the Recycling Board adopted Resolution #RB 2014-2 (attached) revising the threshold for unspent fund balances. The purpose of this policy is to encourage the use of Measure D funds to help achieve the countywide waste reduction goals, and to discourage the hoarding of the funds with no clear plan for their future application. Specifically, the policy states:

Any municipality receiving per capita disbursements of Recycling Fund monies under the Alameda County Waste Reduction and Recycling Act, Section 64.060, shall present to the Board for its approval a written expenditure plan if, at the end of any fiscal year, that municipality has an unspent balance of such monies that exceeds the amount of \$8.00 (eight dollars) multiplied by the population basis used for the first quarterly disbursement of that fiscal year.

If the municipality fails to provide that written plan or the Board does not approve that plan, the municipality shall be ineligible to receive further disbursements per Section 64.060. The municipality shall not be eligible for further disbursements until the required plan is submitted and approved by the Board and all such forfeited monies shall be disbursed to the remaining eligible municipalities on a per capita basis.

Reports from municipalities accounting for revenues and expenditures in FY 15/16, and ending fund balances as of June 30, 2016, were due to StopWaste on October 14, 2016. The City of Newark reported an unspent fund balance as of June 30, 2016 of \$421,550, which exceeded their threshold amount of \$357,864 ($\$8.00 \times 44,733$) by \$63,686. Consequently, the City of Newark has submitted the attached Expenditure Plan showing how they intend to spend down their Measure D fund balance below their threshold by June 30, 2018, the end of the next fiscal year after the current one.

The Recycling Board has dealt with two prior instances of a municipality exceeding the Measure D fund balance policy threshold. In both instances, Hayward and Livermore followed their Plans and reduced their fund balance below the policy threshold within two fiscal years, similar to the proposed plan submitted by Newark. Other municipalities have reported unspent fund balances very close to, but not exceeding, the policy threshold while others routinely spend all or nearly all of their Measure D funds each year.

The Board policy on accumulated fund balances ensures that Recycling Fund monies are used consistently to continue and expand municipal waste reduction programs. The adopted Board policy states:

In evaluating a municipality's proposed expenditure plan, the Board shall consider the following:

- The proposed specific use(s) of the remaining balance and future disbursements.
- The proposed length of time, or schedule over which disbursed funds or fund balances would be used.
- The scope or amount of funds proposed to be expended over the term of the plan.
- The extent to which the plan is designed to meet or promote the provisions, goals or policies of the Act including but not limited to timely expenditure of the funds "for the continuation and expansion of municipal recycling programs."
- Any other objective and reasonable factors that may be presented by the municipality to support its contention that its proposed plan meets or promotes the provisions, goals or policies of the Act.

The City of Newark is participating in the Waste Management Authority Mandatory Recycling Ordinance on a Compliance Schedule Waiver similar to Fremont's, with food scraps and compostable paper added to the mandatory requirements for commercial and multi-family accounts as of July 1, 2017. Newark currently does not have a commercial organics collection program and the city has been engaged for some time with their hauler, Republic Services, to hammer out details of an effective and affordable commercial organics program.

Newark has been planning for some time to utilize a good portion of their accumulated Measure D funds to help "buy down" the costs of implementing new organics collection services under their franchise agreement with Republic. However, it only recently came to the attention of StopWaste staff that the term length (10 years) of Newark's franchise with Republic and the structure of the agreement (options to extend with mutual consent of both parties) would preclude the use of Measure D monies for payments to Republic under that contract. The County Charter requires specific Recycling Board approval for use of Measure D funds for contracts exceeding five years in length (Subsection 64.060(D)), and prohibits use of such funds for contracts exceeding ten years in length. Legal opinions have advised that options to extend add to the total term length of the contract if the options require consent of the contractor.

In light of this unforeseen restriction on use of their Measure D funds, Newark is proposing a Request For Proposals process to hire a consultant to help negotiate with Republic over terms of the new organics services and possibly other aspects of the franchise, and to develop a long term-diversion plan

for the city that would include annual expenditures to keep the unspent Measure D fund balance below the calculated threshold.

Newark anticipates the amount of the consultant contract to exceed the current “overage” of Measure D funds, and in any event for the implementation of any plan developed by the consultant to draw down their fund balance below the indicated threshold by the end of FY 17/18.

RECOMMENDATION

Approve the Expenditure Plan submitted by the City of Newark and find that Newark is eligible to continue receiving its quarterly per capita disbursements from the Recycling Fund through June 30, 2018, while it expends its Measure D funds according to the Expenditure Plan or on other eligible uses.

Attachments:

Attachment A – RB Resolution #2014-2

Attachment B- City of Newark FY 2016/17-2017/18 Measure D Expenditure Plan

Attachment C- City of Newark Annual Measure D Programs Report – FY 2015-2016

ATTACHMENT A

ALAMEDA COUNTY SOURCE REDUCTION AND RECYCLING BOARD

RESOLUTION #RB 2014-2

**MOVED: Wozniak
SECONDED: Sherman**

AT THE MEETING HELD NOVEMBER 13, 2014

REVISION OF RECYCLING BOARD RESOLUTION #RB 2006-12 REGARDING FUND BALANCES OF RECYCLING FUND PER CAPITA ALLOCATIONS

WHEREAS, the Alameda County Charter Section 64 (the Alameda County Waste Reduction and Recycling Act of 1990, hereinafter the "Act") states that "The Recycling Board shall formulate rules for its own procedures and other rules as necessary to facilitate the implementation of the provisions of this Act," (Subsection 64.130(J)); and

WHEREAS, the Act states that fifty percent of the monies from the Recycling Fund shall be disbursed on a per capita basis to municipalities for the continuation and expansion of municipal recycling programs (Subsection 64.060 (B)(1)); and

WHEREAS, on November 9, 2006 the Recycling Board adopted Resolution #RB 2006-12, including the following:

Rule 2: Any municipality receiving per capita disbursements of Recycling Fund monies under the Alameda County Waste Reduction and Recycling Act, Section 64.060, shall present to the Board for its approval a written expenditure plan if, at the end of any fiscal year, that municipality has an unspent balance of such monies that exceeds the sum of the municipality's last eight quarterly Recycling Fund per capita disbursements.

If the municipality fails to provide that written plan or the Board does not approve that plan, the municipality shall be ineligible to receive further disbursements per Section 64.060. The municipality shall not be eligible for further disbursements until the required plan is submitted and approved by the Board and all such forfeited monies shall be disbursed to the remaining eligible municipalities on a per capita basis.

In evaluating a municipality's proposed expenditure plan, the Board shall consider the following:

- The proposed specific use(s) of the remaining balance and future disbursements.
- The proposed length of time, or schedule over which disbursed funds or fund balances would be used.
- The scope or amount of funds proposed to be expended over the term of the plan.
- The extent to which the plan is designed to meet or promote the provisions, goals or policies of the Act including but not limited to timely expenditure of the funds "for the continuation and expansion of municipal recycling programs."
- Any other objective and reasonable factors that may be presented by the municipality to support its contention that its proposed plan meets or promotes the provisions, goals or policies of the Act.

These proposed rules shall take effect July 1, 2007. Rule 2 will be applied to the Measure D Annual Reports submitted after the end of FY 07/08 and each year thereafter.

And **WHEREAS**, the absolute dollar amount and the per capita amount of Recycling Fund municipal allocations have declined significantly since 2006, resulting in a declining threshold represented by the sum of the last eight quarterly Recycling Fund per capita disbursements, and

WHEREAS, municipalities have requested that the Recycling Board revise the “Rule 2” policy to increase the threshold of unspent per capita allocations that triggers the requirement for an approved Expenditure Plan or ineligibility to receive further disbursements,

NOW THEREFORE, BE IT RESOLVED, that the Alameda County Source Reduction and Recycling Board hereby revises and replaces “Rule 2” from Resolution #RB 2006-12 with the following:

Rule 2: Any municipality receiving per capita disbursements of Recycling Fund monies under the Alameda County Waste Reduction and Recycling Act, Section 64.060, shall present to the Board for its approval a written expenditure plan if, at the end of any fiscal year, that municipality has an unspent balance of such monies that exceeds the amount of \$8.00 (eight dollars) multiplied by the population basis used for the first quarterly disbursement of that fiscal year.

If the municipality fails to provide that written plan or the Board does not approve that plan, the municipality shall be ineligible to receive further disbursements per Section 64.060. The municipality shall not be eligible for further disbursements until the required plan is submitted and approved by the Board and all such forfeited monies shall be disbursed to the remaining eligible municipalities on a per capita basis.

In evaluating a municipality’s proposed expenditure plan, the Board shall consider the following:

- The proposed specific use(s) of the remaining balance and future disbursements.
- The proposed length of time, or schedule over which disbursed funds or fund balances would be used.
- The scope or amount of funds proposed to be expended over the term of the plan.
- The extent to which the plan is designed to meet or promote the provisions, goals or policies of the Act including but not limited to timely expenditure of the funds “for the continuation and expansion of municipal recycling programs.”
- Any other objective and reasonable factors that may be presented by the municipality to support its contention that its proposed plan meets or promotes the provisions, goals or policies of the Act.

Rule 2 will be applied to the Measure D Annual Reports submitted after the end of FY 13/14 and each year thereafter.

Passed and adopted this 13th day of November, 2014 by the following vote:

AYES: Jones, Natarajan, O’Donnell, Peltz, Pentin, Sherman, Tao, Wozniak
NOES: None
ABSTAIN: None
ABSENT: Ellis, Kirschenheuter, Stein

Gary Wolff, Executive Director



CITY OF NEWARK, CALIFORNIA

37101 Newark Boulevard Newark, California 94560-3796 (510) 578-4000 FAX (510) 578-4306

November 23, 2016

Wendy Sommer
Executive Director
StopWaste
1537 Webster St.
Oakland, CA 94612

RE: FY 2016-2017 and FY 2017-2018 Measure D Expenditure Plan

Dear Ms. Sommer:

This letter of intent serves as the City of Newark's Measure D Expenditure Plan for the two year period beginning July 1, 2016, through June 30, 2018 (FY 16/17 and FY 17/18), and is submitted in accordance with Rule 2 of the Alameda County Source Reduction and Recycling Board Resolution #RB 2014-2. Rule 2 limits any agency's Measure D fund balance to not exceed the amount of \$8.00 (eight dollars) multiplied by the population basis used for the first quarterly disbursement of that fiscal year. If this amount is exceeded, the agency must submit an Expenditure Plan and their Measure D funds are temporarily suspended until the Expenditure Plan is approved.

For the past several years, the City of Newark has conservatively expended Measure D funds with the intent to use a majority of the funds to assist with the roll out of a new commercial organics program. Recently, the City was informed that the funds may not be used in that manner. In light of this new information, the City now intends to solicit a consultant to assist in the preparation of a long-term diversion plan, assist in reviewing the calculations and concepts in the commercial organic proposal and perform an audit on the material reports provided by the City's hauler.

While expenditures were conservative, Measure D funds were expended on partially funding a Recycling Assistant staff position; replacing all single-stream waste containers at a high foot traffic facility with new three-stream recycling containers to capture more material from being sent to the landfill; and donations to increase the recycling efforts at numerous Chamber of Commerce related events.

At this point, the City of Newark's Measure D fund balance has grown to exceed the allowable balance by \$63,686.

In the coming two Fiscal Years (FY 16/17 and FY 17/18), while continuing to pay for a portion of the Recycling Assistant position, the City of Newark also anticipates spending up to \$75,000 in the first year for the diversion plan and an amount as recommended in the plan for the second year.

Thank you for your consideration of Newark's Expenditure Plan. If you have any questions regarding the Expenditure Plan, please contact Administrative Services Director Susie Woodstock at susie.woodstock@newark.org or at (510) 578-4804.

Sincerely,

A handwritten signature in black ink that reads "John Becker". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

John Becker
City Manager

ATTACHMENT C



ANNUAL MEASURE D PROGRAMS REPORT

Reporting Fiscal Year: Fiscal Year 2015/2016

Submittal Deadline for this Report: October 14, 2016

1. Municipality Contact Information

Program Contact Information:

Municipality Name	City of Newark
Contact Person	Brett Oeverndiek
Title	Recycling Assistant
Telephone Number	510-578-4327
Email address	brett.oeverndiek@newark.org

Municipality Payee Information:

Payee Name	City of Newark
Department	Finance Department
Street Address 1	37101 Newark Boulevard
Street Address 2	
City	Newark, CA
Zip Code	94560

2. Measure D Payments Received for Fiscal Year 2015/2016

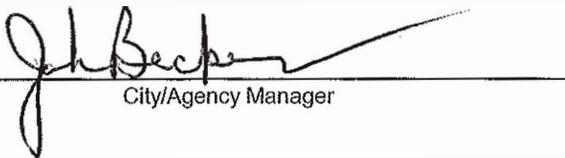
Choose One of the Following Methods for Reporting (Cash or Accrual Basis):

Cash Basis			OR	Accrual Basis		
Quarter Ended	Date Received	Amount		Quarter Ended	Date Recorded	Amount
June 30,				June 30,	Prior Period	
September 30,				September 30,	12/2/2015	\$ 29,539
December 31,				December 31,	3/16/2016	\$ 28,629
March 31,				March 31,	6/6/2016	\$ 28,549
June 30,	Next Period			June 30,	9/2/2016	\$ 28,894

Total Measure D Funds Received: \$ _____

\$ 115,611.00

As the Chief Executive for City of Newark, I hereby affirm that the revenues and expenditures described in this Annual Measure D Programs Report are true and correct.


 City/Agency Manager

10 / 13 / 16
 Date

STOPWASTE

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ANNUAL MEASURE D PROGRAMS REPORT (continued)

3. Measure D Fund Balance Information for Fiscal Year 2015/2016

Beginning Fund Balance:	\$ 343,547.38
Plus Adjustments to Beginning Fund Balance:	\$ (44.30)
Equals Adjusted Beginning Fund Balance:	\$ 343,503.08
Plus Total Measure D Funds Received (From Page 1):	\$ 115,611.00
Plus Interest Earned on Measure D Fund Balance*:	\$ 251.06 *
*Required if fund balance exceeds \$300,000 or prior year's disbursements, whichever is greater	
Less Total Measure D Expenditures (From Pages 3 and 4):	\$ (37,815.33)
Equals Ending Measure D Fund Balance:	<u>\$ 421,549.81</u>

Explanation for Adjustments to the Beginning Fund Balance:

\$44.30 was inadvertently added to the FY14/15 Measure D report, when the funds should have come from another funding source. We indicated at that time that we would adjust this reports beginning fund budget. *Interest earned could not be determined prior to submitting this report. If different than indicated, we will provide a beginning fund balance adjustment for the FY16/17 report.

4. Program Expenditures for Fiscal Year 2015/2016

On the following pages, provide a brief description of activities financed by your program's Measure D allotments and costs incurred during this reporting period. Identify the cost category most closely describing the type of cost incurred. The table below identifies examples of costs in each of six (6) cost categories.

Cost Category	Cost Examples
Administrative Costs	
1. Administrative	<ul style="list-style-type: none"> • Employee salaries • Employee benefits • Legal services • Insurances • Overhead expenses • Contract management
Direct Costs	
2. Franchised Recycling Program	<ul style="list-style-type: none"> • Commercial route curbside recycling collection • Residential route curbside recycling collection • Christmas tree curbside collection • Food scrap and green waste collection
3. Outreach and Education	<ul style="list-style-type: none"> • Promotional items • Earth Day events • Recycling education • Bay Area Recycling Outreach Coalition (BayROC) contributions • Contests/achievement awards • Green Schools outreach • Recycling drives
4. Physical Assets	<ul style="list-style-type: none"> • Outdoor storage containers • Artificial turf football fields • Curbside recycling carts • Recycled content playground structures • Recycled content furniture
5. Professional Services	<ul style="list-style-type: none"> • Rate review services • Collection hauler contract services • Base year composition study
6. Other Expenses	<ul style="list-style-type: none"> • Paper supplies • Memberships • Subscriptions • Postage

Notes:

Please provide supplemental documentation supporting the methodology used to allocate staff positions, equipment, supplies, services, or any other cost funded with Measure D monies (i.e., when a percentage of a cost is funded with Measure D monies).

For each employee that works on Measure D related activities, please provide the following supporting documentation for that employee:

- A complete description of the actual Measure D related activities that employee performed
- A description of the methodology used to allocate that employee's time to Measure D activities (when that employee spends time on other activities)
- Supporting documents that substantiate the allocation of an employee's time to Measure D activities (e.g., accounting system reports, summaries of employee timesheet records, or a current cost allocation plan that ties exact allocation percentages to those used in this Annual Report).

It is not sufficient to just estimate an employee's time spent on Measure D activities, without backup documentation.



at home • at work • at school

ANNUAL MEASURE D PROGRAMS REPORT (continued)

4. Program Expenditures for Fiscal Year 2015/2016 (continued)

Item/Service: 2015 Newark Days Supplies Cost: \$ 93.46

Description of Cost:

Cost Category:

Recycling can liners were purchased for the city's annual Newark Days Celebration to help with the collection of recyclable materials.

Direct Costs

Item/Service: Administrative Costs Related to Recycling Assistant Position (Continued on next section) Cost: \$ 19,275.83

Description of Cost:

Cost Category:

Prior to the 2014/2015 fiscal year, HF&H had been managing the City's recycling contracts/duties. In October of 2014, a recycling assistant position was created to take over the duties HF&H had been performing. Brett Oeverndiek's now handling the day-to-day recycling duties of the franchise agreement with Republic Services.

Administrative

Accounting Reports Attached

Item/Service: Administrative Costs Related to Recycling Assistant Position Cost: \$

Description of Cost:

Cost Category:

His duties include the education and training of businesses as to recycling opportunities; providing information for the City's website dedicated to recycling; monitoring Green Halo C&D tracking system; serving on StopWaste.Org's TAC; arranging for recycling services at Newark Days (Citywide Event); Mandatory Recycling Ordinance notification/warning/citation outreach; Reviewing and responding to commercial organics recycling proposal; as well as other duties as they arise.

Administrative

Item/Service: Mileage Reimbursement Cost: \$ 394.54

Description of Cost:

Cost Category:

Multiple times throughout the 2015/2016 fiscal year a need arose to attend offsite meetings, trainings, and various sites throughout the Bay Area.

Administrative

Accounting Reports Attached

Item/Service: 3 Stream Recycling Containers for City Facilities Cost: \$ 18,051.50

Description of Cost:

Cost Category:

We purchased 20 small top loader recycling containers from Clean River Recycling Solutions. These purchases were made to increase the level of recyclable & compostable material being captured at 2 of our recreation centers. Once our full organics program is up-and-running we will be purchasing more of these containers to place in the rest of our City facilities. While no numbers are available yet, staff at these locations have noticed a change in behavior with people now looking where they of their waste.

Direct Costs

Subtotal: \$ 37,815.33



ANNUAL MEASURE D PROGRAMS REPORT (continued)

4. Program Expenditures for Fiscal Year 2015/2016 (continued)

Item/Service: _____ Cost: \$ _____

Description of Cost: <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	Cost Category: <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Item/Service: _____ Cost: \$ _____

Description of Cost: <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	Cost Category: <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Item/Service: _____ Cost: \$ _____

Description of Cost: <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	Cost Category: <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Item/Service: _____ Cost: \$ _____

Description of Cost: <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	Cost Category: <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Item/Service: _____ Cost: \$ _____

Description of Cost: <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	Cost Category: <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Subtotal: \$ _____