

OFFICE OF
MARY M. CHEH

Councilmember, Ward 3 | Chair, Committee on Transportation & the Environment

MEMORANDUM

To: Chairman Phil Mendelson
FROM: Councilmember Mary M. Cheh
DATE: February 25, 2021
SUBJECT: Requests for the March 2, 2021 Legislative Meeting



I request that the following emergency measures be agendized for the March 2, 2021 Legislative Meeting:

- Third-Party Food Pickup Commission Emergency Declaration Resolution of 2021
- Third-Party Food Pickup Commission Emergency Act of 2021
- Third-Party Food Pickup Commission Temporary Act of 2021

On March 11, 2020, the Mayor issued Mayor's Orders 2020-45 and 2020-46, declaring a public emergency and a public health emergency in the District due to the imminent threat to the health, safety, and welfare of District residents posed by the spread of COVID-19. As a result of these and additional orders, restaurants are operating at limited onsite capacity, and have shifted more (or even all) of their sales to takeout and delivery. Many of these sales are facilitated by third-party food delivery platforms, which operate by listing restaurants on an online platform where diners can view restaurant menus and place orders for pickup or delivery. Before the public health emergency, third-party food delivery platforms charged very high fees, typically around 30% of an order total. These fees cut into restaurants' already-narrow profit margins and became increasingly untenable as restaurants were forced to rely on takeout to stay in business.

On June 9, 2020, the Council passed emergency legislation to temporarily cap the commission fees for delivery and pickup at 15% per order to help limit these costs while dining rooms are closed or at limited capacity. This emergency cap provided a lifeline to the District's struggling restaurant industry. But this 15% cap applies to both pickup and delivery orders, even though costs to third-party delivery platforms are much lower for orders for which they do not provide delivery services. These emergency and temporary measures would establish a lower 5% commission cap for orders for which the platform does not provide for delivery of the order. This would include orders that the customer picks up and orders for which a restaurant provides its own delivery services. This lower commission cap will help restaurants make money on such orders while their dining rooms are closed or at limited capacity, and give restaurants greater choice in how they provide delivery to their customers

- CleanEnergy DC Omnibus Retroactive Emergency Declaration Resolution of 2021
- CleanEnergy DC Omnibus Retroactive Emergency Amendment Act of 2021

When the CleanEnergy DC Omnibus Technical Amendment Emergency Amendment Act of 2021 expired on February 14, 2021, neither the temporary legislation, passed on November 10, 2021, nor the congressional review emergency legislation, passed on February 2, 2021, was in effect. This emergency legislation would make that language retroactive to February 14th, addressing the gap between the expiration of the original emergency legislation and the effective date of the congressional review emergency legislation.

In addition, at the request of the Mayor, I request that the following emergency measures be agendized at the March 2, 2021 Legislative Meeting:

- “Modifications to Contract No. CW34843 with Covanta Fairfax, Inc. Approval and Payment Authorization Emergency Declaration Resolution of 2021”
- “Modifications to Contract No. CW34843 with Covanta Fairfax, Inc. Approval and Payment Authorization Emergency Act of 2021”

This legislation would approve, on an emergency basis, Modifications 10 and 11 to Contract No. CW34843 with Covanta Fairfax, Inc. to provide solid waste disposal services at an existing licensed and permitted solid waste incinerator, and to authorize payment for the goods and services received and to be received under that contract.

The base term of the Contract was for a period of five (5) years from date of award, with two 3-year options. On October 29, 2020, I sent a letter to the Director of the Department of Public Works expressing my concern with the Contract and asking that the 3-year option not be exercised, and that a one-year extension instead so that the District may reassess and rebid the contract. This legislation would approve such a one-year extension.

While this legislation approves a one-year extension, the District must use this time to reassess the Contract and consider alternatives. Under the current Contract, the District burns its solid waste at Covanta’s incinerator in Lorton, VA. The evidence is increasingly clear that such incineration poses particular harms to marginalized communities and is in direct conflict with the District’s waste diversion and clean energy goals under the Sustainable DC Plan.

Trash incinerators release many air pollutants, including nitrogen oxides, sulfur dioxides, particulate matter, lead, mercury, dioxins, and furans. For many of these substances, the emissions exceed the levels at coal power plants. These substances are known to have serious public health effects, including increased risk of cancer, respiratory illness, and cardiovascular disease. The Covanta incinerator is particularly harmful because it is located an area home to a large population of people of color, meaning that the surrounding community is especially vulnerable to the impacts of pollution due to other social determinants of health, such as socioeconomic status, access to health care, and racism. This arrangement raises significant environmental justice concerns, and the District should think critically about whether incineration in Lorton is a just way to dispose of its waste.

Incineration is also inconsistent with the District's environmental goals. Trash incinerators depend on a steady stream of waste to burn, putting their bottom line in direct conflict with the District's efforts to reduce and divert waste and achieve Zero Waste by 2032. Use of the facility is also inconsistent with the District's clean energy goals. Because Covanta is permitted to sell renewable credits into Maryland's renewable energy portfolio (which includes "waste-to-energy" incineration as a tier one renewable energy source), much of the energy produced at the facility is displacing clean renewable energy, likely wind, resulting in a net harm to the region's clean energy efforts.

Finally, the Covanta incinerator is 30 years old, already at the average life expectancy of an incinerator. In 2017, the facility experienced a fire that burned uncontrolled for two weeks. This fire—and similar incidents likely to occur with increasing frequency as the facility continues to age—only exacerbates the public health and environmental justice concerns associated with this facility. In addition, the incinerator was closed for the rest of the year as it underwent repairs. During this time, the District had to redirect its waste to landfills, and the District has been in an ongoing financial dispute with Covanta over Covanta's broken promise to pay to redirect waste during that time.

For all of these reasons, the District must take a serious look at whether incineration at Covanta continues to be the best choice for managing its waste. The Council is moving this one-year extension to give the District time to consider alternatives to incineration and to rebid the contract rather than continuing forward with the existing contract on a more long-term basis.

Draft copies of the legislation are attached. Please contact Michael Porcello in my office at 724-8062 or mporcello@dccouncil.us if you have any questions.