

Judge invalidates controversial Montebello-Athens trash contract

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MONTEBELLO - A controversial trash hauling contract that set off a storm of protests, three lawsuits and led to the successful recall of two councilmembers and the ousting of another has been deemed null and void by a Superior Court Judge.

In his tentative decision, Judge James Chalfant stated that the \$150 million, 15-year contract Montebello awarded to Athens Services in 2008 is invalid because it violates Proposition 218, a 1996 state ballot measure requiring voter approval for local taxes.

Chalfant also said that the contract was not properly executed because it was never signed by the mayor, a seat held by Councilman Bill Molinari when the agreement was approved. Molinari opposed the contract.

The ruling, issued last month, stems from a 2009 lawsuit filed by Montebello resident Mike Torres, who claimed that the council abused the public process when it approved the 15-year contract with Athens, virtually allowing the company to take control of all refuse collection in the city.

"I felt it was unfair then and it's unfair now," Molinari said. "I'm very pleased with the outcome. The victors here are the residents of Montebello and Mike Torres who stepped up to file a lawsuit on behalf of the residents. It's also a victory for the free-enterprise system."

Calls to Miles Chen Law Group, the lawfirm representing Torres, were not returned.

Robert Palmer, one of several attorneys representing Athens and its owner, Dennis Chiappetta, did not return calls for comment.

Final judgement is set for Sept. 18.

Athens can appeal the decision.

"At this point, we are to invalidate the contact and put it out to competitive bid for the first time in 50 years and get a competitive price," Molinari said.

Before the new contract was approved on July 23, 2008, Athens was the exclusive hauler of Montebello's residential trash and shared commercial trash collection with smaller garbage hauling businesses.

Athens has been the exclusive residential trash hauling franchise in the city since 1962.

Under the approved contract, Athens paid the city \$500,000 to take over all commercial, industrial and residential trash hauling in Montebello in 2016 for 15 years.

While the commercial waste collection stalled to allow independent haulers to transition out of the city, Athens began the amended residential waste program in July 2009.

In the suit, Torres accused the council of violating the city's municipal code by not placing the exclusive trash hauling contract out to bid and failing to abide by city rules that prohibit the council from entering into exclusive commercial waste hauling agreements.

Chalfant threw those claims out in his July 26 decision.

"Athens has held an exclusive franchise in the city for residential waste hauling for 50 years," he wrote. "It continued to have an exclusive franchise for residential waste for years ... without complaint from anyone."

Chalfant also said trash hauling is not considered a professional service, so it did not need to go out to bid, which is generally done for contracts worth more than \$50,000.

"Although it would have been the better practice to do so, the city was not required to competitively bid the Athens contract," Chalfant said.

However, Chalfant agreed with Torres' allegation that the council violated Proposition 218 by enacting the trash contract that increased fees on residents' property tax bill.

While residents currently pay the same \$19.82 a month for trash hauling that they have paid since 2008, under the earlier contract they received unlimited service. Now residents must pay extra for collection of more than two bins.

Those trash hauling fees are put on residents' property tax bills. The city then transfers the funds to Athens.

"Although the city does not retain the residential fee, it imposes the fee through the property tax bill," he wrote. "This renders the residential hauling component of the contract void."

Molinari said that because the residential and commercial service is part of the same agreement, the entire contract is void.

Under the ruling, the city must now terminate services with Athens. Trash services will continue during the transition and remain uninterrupted, officials said.

Molinari said it is likely that Athens will appeal the decision or try to revert to the previous contract, which was based on manual pick-up services.

"Athens has had the benefit of three years of contract performance," Chalfant wrote. "While it has incurred several million in costs to purchase trucks and garbage cans for residents, it also has garnered profits. Therefore, it is unknown what, if any loss Athens will sustain by a void contract."

The company purchased four new garbage trucks using compressed natural gas for \$1.2 million and provided customers about \$1.5 to \$1.7 million in new containers.

Judge Chalfant also struck down allegations in Torres' lawsuit that then-Councilwoman Kathy Salazar violated conflict of interest laws when she cast the tie-breaking vote in favor of the contract.

Salazar - and former council members Robert Urteaga and Rosie Vasquez - are subjects of a new lawsuit filed by the city for their role in the approval of the contract.

Torres alleged that Salazar, who runs a drug counseling organization, was financially benefiting from Athens and Chiappetta, who served as a board member for the organization at the time and annually donates funds to the nonprofit.

"The relationship between Salazar, Athens, and Chiappetta is a matter which should have been disclosed by a fair-minded politician, but the failure to disclose it is not unlawful," Chalfant wrote.

Salazar said she was pleased with the results.

"I'm certainly satisfied with it because I never did believe that," Salazar said. "It's not a matter of vindication for me. I voted for it because I felt there was no conflict of interest. It never occurred to me that there was, and I'm glad the court agreed."

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