

Rate Cap Hearing NYC - Business Integrity Commission
September 23, 2021

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THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION

RATE CAP HEARING

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Held remotely via
Web-Ex

September 23, 2021
10:00 a.m.

Reported By:
Bernadette T. Fortunato

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A P P E A R A N C E S :

SHORMINA AHMED
Executive Agency Counsel, BIC

NICOLE MATHIAS
Director of Policy, BIC

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MS. AHMED: Good morning, and welcome everyone to today's public hearing regarding the Rate Cap. The time is 10:02 a.m. on Thursday September 23, 2021.

Thank you for attending this hearing. A court reporter is present and will transcribe the hearing. To avoid background noise during this hearing, we ask everyone to please mute yourself until we start calling on speakers.

My name is Shormina Ahmed, Executive Agency Counsel of the New York City Business Integrity Commission, otherwise known as BIC, or the Commission.

BIC is conducting this Hearing as required of the City of New York. BIC must hold a Public Hearing every odd year before October 31st, regarding the maximum rates charged by private trade waste carters for the collection, removal, disposal of trade waste, also known as the Rate Cap. BIC's publishes the Hearing Notice in the City Records on August 19, 2021.

We also disseminated a copy of the

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Notice via email to any New York City local, elected officials, all fifty-nine community board managers, several media organizations in the city, and other interested parties. Lastly we've made available a copy of the Hearing Notice on BIC's website.

This Hearing gives interested parties an opportunity to present their positions on the Rate Cap, so that the Commission may gain a better understanding of the current state of the commercial trade waste industry, and how the current Rate Cap impacts the industry. The current Rate Cap was put place in 2018.

The New York City rules states some of the factors that we may consider when evaluating the Rate Cap. These include Producer Price Index, commonly referred to as the PPI. Available data on the trade waste industry, and any other factors that may be relevant to passing a fair, reasonable return to licensees and the protection of customers from unreasonable charges. The rules also state that components of a change in the Rate Cap bear the burden of demonstrating on an

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industry wide basis that existing rates are inconsistent with a standard for maximum rate.

That being said, we are here to listen to you on this issue. We hope that your statements will be supported by studies and other forms and paragraphical data.

This Hearing is the beginning of our fact gathering process on this issue. After we've gathered all pertinent information, we will then be in a position to decide whether or not to adjust the Rate Cap.

As I mentioned, a court reporter is present today, and will record the Hearing. This Hearing is also being video recorded. You may present an oral statement, or submit written comment.

BIC will carefully consider all the comments that it receives today at the Hearing. All written comments are received until October 23, 2021.

The Commission's Director of Policy, Nicole Mathias, will begin calling to those of you who wish to speak this morning, in the

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order in which you have signed in.

When you speak, please state your full name, your affiliation, and speak slowly, and clearly, so that the court reporter can understand and accurately transcribe your statement. We also would like you to limit your statements to three minutes.

Thank you.

MS. MATHIAS: Good morning everyone. Thank you again for joining today's virtual hearing. I am Nicole Mathias, Director of Policy for the Business Integrity Commission.

I will begin calling speakers in a moment. Please feel free to provide your testimony by audio or video, by turning on your camera, if you prefer. Once everyone who had previously signed up to speak has the opportunity, we will open the floor to anyone else on the call, who wishes to give comment.

If you wish to speak, and have not already signed up, please do that now.

As a reminder please keep yourself muted, unless you are speaking, so everyone can hear the speaker clearly, and the court

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reporter can transcribe the Hearing.

The first speaker is Ron Bergamini.

MR. BERGAMINI: Thank you, Nicole.

Hello everyone. I heard someone say that we do this every odd year. It's certainly been an odd year, or a couple of years, so I know that is really a continuation, where there should have been the Rate Cap increase in 2020. I understand why fully. I will be very brief here because it's really the same old story.

All costs are going up and they are continuing to go up. You just need to read the newspaper, in particularly of the disposal issues, where those costs are being driven up. There is a nationwide driver issue, and it's certainly in the New York area.

The unions are asking for double digit wage increases using the line, understandably, that they are essential workers. Fuel is up, and I have, and it's public information, the U.S. Department of Labor, Bureau of Labor Statistics, which came

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2 out in September for the twelve months ending
3 August 2021, the increase is 5.3 percent.
4 That is certainly the highest I've seen in
5 the fifteen years that I'm doing this, and
6 advocating for -- actually I advocate for the
7 end of the Rate Cap, but certainly for its
8 increase, and there is one other issue here
9 that I think is important for the Commission
10 to consider.

11 We have the increases, and I'm sure
12 others will talk about that, but we also have
13 and understandably and we support it,
14 stringent new requirements when it comes to
15 equipment and safety standards, and they will
16 undoubtedly escalate in costs. As times goes
17 on trying to find some of these -- the
18 equipment is difficult, but we have to
19 consider that with things such as side
20 guards, computers that are in trucks, the
21 tablets that are in trucks, the additional
22 training that just has been advanced by the
23 BIC and the DSNY.

24 And finally, all costs in the New York
25 City area are just higher than the national

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average, whether its tolls, wages, fuel, processing and recycling.

I'm happy to send the report from the C.P.I. -- from the U.S. Department of Labor, and I'm sorry, I'm speaking on behalf of Interstate Waste Services, which is the parent company of the licensee Action Carting.

Thank you for the opportunity to speak today, and that's all I have. Thank you.

MS. MATHIAS: Thank you, Ron. The next speaker is Steven Bellino.

MR. BELLINO: I didn't plan on speaking today, but that's okay. I will take an opportunity.

My name is Steven Bellino, and I am from Liberty Ashes, Inc., and we operate in Long Island, Queens, and basically all the boroughs.

To basically back up what Ron Bergamini said, the inflation rate on the C.P.I actually is 5.8 percent, a little bit higher. I also did the study on the C.P. rates. Rates have been going up approximately three

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percent a year. It's been three years since we've had an increase.

Insurance has gone up approximately three hundred percent to insure these trucks for liability. Steel has gone up approximately one hundred percent, and everything related to this industry, including driver wages, are increased, so I can't stress enough that we need an increase, and we need it bad.

I would also like to say that this system of Rate Cap is twenty-five years old. It was instituted because of organized crime affiliation in 1996, and today we have a competitive marketplace.

If you raise a customer, and the customer is not satisfied with your rate, he finds somebody else at a phone call. It's that simple.

So my comments are; first, do away with the Rate Cap, and second, if we can't do away with the Rate Cap, give us a fair rate in return because we're all suffering here. Thank you, very much.

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MS. MATHIAS: Thank you. Next up is Tom Toscano.

MR. TOSCANO: Yes. I will echo what's already been said, and I'm going to hit it from a little bit of a different angle.

My name is Thomas Toscano, and I am the CEO of Mr. T Carting. A third generation family business that has served New York City in the waste and recycling market for more than seventy-four years. There are three costs to picking up waste and recycling in the city.

There are disposal and dumping costs, labor costs, and the equipment costs that includes fuel.

The Rate Cap was last increased in the summer of 2018. From then until now, carters have been purchasing trucks to update their fleet to the standards of Local Law 145. These costs have increased significantly above inflation for that reason.

In addition, diesel fuel costs are at a five-year high, and continue to increase. These costs factor into the dump rate that I

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will discuss shortly.

In short, during the past three-years my company's truck cost increased by nearly twenty percent.

During that same three-year period our disposal costs are up just over twelve percent, and I expect them to jump shortly.

Disposal costs is closely tied to fuel prices that, as I've mentioned, are climbing. I expect their costs to track higher at more than five percent annually because of fuel and the driver shortage that I will get to in a minute.

Lastly, and most importantly, are the labor costs. In a typical year labor costs increased three or four percent. The last few years have been far from typical.

For decades the minimum wage was under \$10 per hour. Drivers and helpers in our industry were typically three or four times what that minimum wage was, and it was not a factor. When minimum wage was raised to \$15 an hour, we did not have to raise a single driver or help to comply with the law. The

1
2 issue is that the sanitation jobs are very
3 difficult jobs. You will not attract somebody
4 who can work at Starbucks for \$15 an hour, to
5 work nights, outside in all kinds of weather,
6 in an extremely physical job for a few
7 dollars more than minimum wage. There must be
8 significant differential to draw them into
9 the industry. Further, there is a nationwide
10 CDL driver shortage that is attracting people
11 out of the industry.

12 Again, sanitation jobs are difficult
13 jobs where you get in and out of the truck
14 hundreds of times a night, unlike most other
15 CDL jobs. All these factors are converging to
16 drive up wages more than any other costs, and
17 I expect an overall increase in this cost of
18 ten percent per year for the next few years.

19 Two years ago the BIC started the
20 process of reviewing the Rate Cap, and
21 despite the laws of the City requiring the
22 BIC to make a determination, no determination
23 was ever made. That process is still open
24 because of that, and the BIC can give an
25 increase immediately to finish that review.

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2 I recommend that the BIC increase the
3 Rate Cap by twenty percent to finish the
4 process starting in 2019. After that the BIC
5 can further study the issue to comply with
6 its 2021 obligation to see if a further
7 increase is necessary.

8 Regulations and oversight of this
9 industry have increased dramatically over the
10 past three years. The carters have not
11 seriously opposed the major concern to the
12 BIC aside from asking minor changes now to
13 achieve those goals. A lot of those
14 regulations are expensive, particularly the
15 equipment costs. The increase safety
16 enforcement has driven some drivers out the
17 industry, and while I'm not asking a
18 reduction in those safety rules, or
19 enforcement, realize that if you raise the
20 bar for drivers, you must also raise the
21 compensation to attract more and better
22 drivers into the industry.

23 In addition to these the looming
24 commercial waste zone RFP has all but insured
25 there will be no new entrance into the market

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on the carter side.

I fear the City is setting up a perfect storm scenario when you put the all together. If a brand new employee comes into this industry and does everything all right, he or she will not be driving a truck for at least a year.

Making a mistake now, and not giving immediate Rate Cap relief cannot be undone later just by simply raising the cap. There is a significant lead time in getting drivers. There will be some accounts that cannot get serviced. As an example we recently dropped an account that required us to ring a bell, and wait for an account to bring down garbage. This stop usually took fifteen minutes, where a typical stop took less than a minute. If you squeeze my company by holding my revenue line and raising my costs, I will not get accounts like this.

Time stops are another example of difficult accounts that will have trouble finding a carter. Add the fact the traffic is

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now beyond the pre pandemic levels, which shrinks the window when you can sent out a truck. Certain areas may have difficulty as well, like densely populated Manhattan and Downtown Brooklyn --

(Whereupon, there was an audio disruption.)

In 2001 the City added a weight base cap to the Rate Cap being when a very large account did not notify the carter. That problem was rectified quickly. The reasons stated above and a May emergency Rate Cap increase in the future will not fix this situation because of the new environment we're in, and the lead time to train new drivers. Thank you.

MS. MATHIAS: Thank you. The next speaker will be Andy Moss.

MR. MOSS: Good morning everybody. I am pleased to be here this morning. I just want to echo Tom Toscano's comments about the process still being open.

We are in agreement, and we would urge the Business Integrity Commission to make an

1
2 immediate Rate Cap adjustment, and then
3 review this testimony for an additional
4 adjustment after that.

5 I have submitted my Waste Connections
6 testimony in writing. I should say that I am
7 Andy Moss with Waste Connections. The only
8 thing I want to highlight this morning, that
9 hasn't already been said, is that the Federal
10 Bureau of Labor Statistics publishes an index
11 specific to the solid waste collection
12 industry, and since the date of the last
13 increase in the Rate Cap, that index has
14 increased just a fraction under ten percent,
15 and if that goes through from the date of the
16 last increase through July, it doesn't have
17 August, which is sure to be an even higher
18 number, and it doesn't include New York City
19 specifically which also is sure to be a
20 higher number, if that were looked at
21 specifically.

22 The only other thing I would say is that
23 is a backward looking number. It's not a
24 forward looking number, so we would urge the
25 Business Integrity Commission to make an

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adjustment that not only reflects the increases that we have seen, but to anticipate the increases that we will see. Thank you.

MS. MATHIAS: Thank you.

I would just like to reiterate if you are not already on the speaker list, and you would like to speak, please put your name into the chat box. The next speaker on the list is Steve Changaris.

MR. CHANGARIS: Good morning, Nicole. Thank you. My chat feature is hidden on my cell phone device, so I had to do an offline email. Thank you, Nicole.

My name is Steve Changaris. I'm the New York City Chapter Director for the National Waste and Recycling Association.

The chapter represents many of the private sector waste and recycling companies in the industry. We have an active chapter. The hard working man and women of the chapter collect and manage the waste produced by the City, 100,000 - 150,000 plus commercial entities, depending on whose data you use.

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It's a huge task done every day. We do it in good weather, and bad weather, and we try to be as good corporate citizens and work as safely in the neighborhoods and the community we serve.

The last eighteen months and those who needed to be in front of us, we see running our city trade waste system as an essential industry in the COVID-19 crisis.

Our system, meaning the employees, customers have all suffered severe physical health and financial duress during the pandemic, as has so many others. The chapter as an advocate for city trade waste companies in this system has the simple job to put the needs of the trade waste providers front and center.

So clearly today the top priority of my message is that we need Rate Cap relief now from the BIC, so the companies can begin the work with their customers in the critically needed process to right the shift, or set another way, rebalance the scales in the trade waste customer service provider

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relationship.

The economics of running a New York City trade waste company could not have been more strained over the last eighteen months, than these pandemic ill effects, and the effects today.

The industry has been severely crippled, in particular since it relies solely on commercial trade waste, which commercial waste was virtually shut down in the city during the pandemic.

In addition to the economic impact of the impact since the last Rate Cap increase, trade waste companies have been subject to new regulatory cost imposed by the City for such things as safety side guards, new truck emissions, new compliance for car permits, commercial waste zone costs incurred by these companies for the longterm company survival, as they try to put their bids together to go forward, and most recently, the BIC's implementation of its safety package of new regulations.

All of these things are driving costs

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2 further with the installation of costs of new
3 training, and reporting requirements,
4 equipment and the light.

5 So we have a couple very simple requests
6 we will put on the record today. Our first
7 and longstanding request since the beginning
8 of these hearings has been to eliminate the
9 Rate Cap. It's anachronistic and old and
10 should be done away with, and let these trade
11 waste companies that are fully vetted,
12 licensed for skills, knowledge and ability to
13 work out the pricing that works best for
14 them, and their customers, and then on the
15 other hand, if the Rate Cap is to be kept, we
16 will reiterate the comment we made in the
17 2019 Hearing, that there should be a minimum
18 rate at which below waste recyclables and
19 organics cannot be collected and managed in
20 the city.

21 The race to the bottom hurts the push
22 forward with better equipment, better
23 drivers, and better standards for the
24 industry. Second, we request an immediate
25 rate cap increase due to the COVID-19 effect

1
2 of no rate cap being issued after the October
3 2019 Hearing. Second, we also urger another
4 rate cap increase effective to be issued in
5 January. We believe the immediate rate cap
6 relieve should be in the twelve percent
7 range, and the January 2023, Rate Cap
8 looking forward, should be in the five
9 percent range, and this will both account for
10 the three or four years we have not had a
11 rate cap increase, as well as the glimpse
12 into the future before the next review two
13 years from now.

14 I want give a couple of very specific
15 numbers about what is going on in the world
16 of our companies world. The transportation
17 sector according to some of the research has
18 had accumulative inflation rate since 2017,
19 eleven and a half percent. The national
20 accumulative inflation rate since 2017, has
21 been more than eleven and a half percent.

22 In New York City alone it's more than
23 eight percent. The PPI, the Producer Price
24 Increase for solid waste collection is up
25 twenty-one percent since 2017, from 133 to

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154.

Typically trade waste service company cost include labor, equipment, disposal fees, fuel and safety, insurance, administrative costs, regulatory costs, taxes, and more labor and more.

Labor in our world -- I'm only going to focus on the one labor issue for now, and in our world includes a spectrum of employees from drivers, helpers, mechanics, operations, administrative and more. Just regarding drivers, the driver shortage is the top concern heard throughout the industry, and as it is noted earlier in this testimony by others, there has been upward driver wage pressure in the industry for several years running now.

In a recent trade press quote from the Stifle Industry Analysis, I think it was from late 2019 or early 2020, "Driver wage rate growth should be in the six to ten percent range year over ear." These factors have not changed and continue unevaded.

We appreciate the opportunity to provide

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this testimony, and continue to look forward to our relationship with BIC, to advocate on behalf the City's private sector waste industry. Thank you very much.

MS. MATHIAS: Thank you. That concludes everyone on the pre sign-up list. Is there anyone else on the call today who would like to speak?

CALLER: Yeah, Dominic Carucci.

MS. MATHIAS: One more time, please?

(No verbal response was given.)

MS. MATHIAS: Who was that?

(No verbal response was given.)

MS. MATHIAS: Who would like to speak?

(No verbal response was given.)

MS. MATHIAS: Okay. Hearing none, we will now close the record for this hearing. As a reminder, BIC will accept written comments until October 23rd, so please feel free to email, mail, or fax in your testimony if you have not done so yet.

The Hearing is now closed. It is 10:25 a.m.

Thank you very much everyone, and please

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stay safe.

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(TIME NOTED: 10:25 a.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

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COUNTY OF NASSAU)

I, Bernadette T. Fortunato, a Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such an examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of these parties to this action by blood or marriage, and that I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on this 23rd day of September, 2021.

Bernadette Fortunato

BERNADETTE FORTUNATO