



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: REVIEW OF TOW SERVICES
AGREEMENT

DATE: January 18, 2006

Approved

Date 1/19/06

COUNCIL DISTRICT: Citywide

RECOMMENDATION

- 1) Direct staff to proceed with implementing Section 3 of the adopted Fee Schedule for the Tow Services Agreement adopted by Council on December 3, 2002 by bringing forward CPI increases *for the Basic Tow Rate and the Contract Compensation Rate only* or;
- 2) Direct staff to review the Fee Schedule for Tow Services Agreements and return to the City Council within 90 days with a report of possible adjustments to the tow rates.

BACKGROUND

On December 14, 2005, the Rules Committee forwarded Councilmember Williams' December 5, 2005 memorandum, entitled *Review of Tow Services Agreement*, to the City Council for discussion and to provide staff with direction. In his memorandum, Councilmember Williams requested the following:

- 1) Request staff to review the Tow Services Agreements and clarify whether the annual review and adjustment is for the tow rates only or all rates charged by tow operators.
- 2) Request staff to do a workload assessment for a mid-contract study of all fees related to tow services in similar jurisdictions to see if adjustments should be made above the CPI.

ANALYSIS

On December 3, 2002, the San Jose City Council adopted Resolution 71324, which set forth the Fee Schedule for Tow Services. The current Tow Services Agreement is due to expire on March 30, 2008. To simplify administration of the contracts, it was recommended that the City establish a \$50.00 flat rate for each tow and eliminate storage, impound and lien sale fee collection. The City fee for basic tows was increased and all other revenue was left to the tow contractors, resulting in a revenue neutral change for both the City and the tow contractors. Administrative costs related to tracking, accounting for, and reporting on storage, lien sale and tow revenues decreased for both the City and tow companies. The tow contractors were given the incentive and flexibility to pursue business opportunities in storage and lien sales and would recoup all additional revenue stemming from efficiencies from such endeavors.

Staff recommended fees, which were an overall increase of an average of 15%, based upon a tow rate study that included an analysis of fair return to the tow contractors. In addition, new fees for owner or Police requests for after-hours "gate" and "special handling" services were added as a means to allow tow contractors to recover the expenses associated with releasing vehicles after 9:00 p.m. and providing larger, more expensive flat bed tow truck equipment to minimize the chance of damaging vehicles during a tow. An additional category of storage fees for oversized vehicles, such as motor homes, was created.

At the Council meeting, Mayor Gonzales, and Councilmembers Dando and Cortese introduced a memorandum modifying the staff recommendation regarding daily storage charges by increasing the recommendation from \$32 a day to \$36 a day. Thus, the overall rates approved exceeded levels recommended by staff as a fair return.

Section 3 of the *Agreement* states:

Beginning July 1, 2004 and annually thereafter, the charges for the Basic Tow Rate and the Contract Compensation Rate only shall be subject to an increase based upon increase to the San Francisco-Oakland-San Jose Consumer Price Index for Urban Wage Earners and Clerical Workers, not to exceed Five percent (5%) per year.¹

This Section of the Agreement built in an annual rate increase during the seven-year agreement period to maintain adequate levels of cost recovery between the City and tow contractors for service in order to eliminate the need for periodic rate reviews. The Mayors memorandum stated, "Review fee increases as part of the fees and charges review in the budget process." Staff took this direction to mean simply apply the CPI increases to the two fees subject to the increase during the annual revision of fees and charges.

¹ This section was inadvertently omitted from the contracts signed by the Contractors; however, as a legislative act the provisions of the resolution take precedence as the only legal authority for increases unless Council takes action by amending the resolution.

Staff has met with the respective tow contractors on an annual basis and has been willing to increase the Basic Tow Rate and the Contract Compensation Rate, as specified in the adopted Resolution. The tow contractors have declined these increases asserting that the Council direction was to review all tow service fees on an annual basis. The following table summarizes the basic tow rate history.

Basic Tow Rate History

	Before Resolution 71324	After Resolution 71324	With Full CPI applied
Operator Basic Tow Charge (per Tow)	\$90.00	\$110.00	\$113.66
City Contract Compensation Rate	\$43.04	\$50.00	\$51.66

At this point, the only official direction to staff from the full Council is the language set forth above. If the Council wishes to change this direction, amending the Resolution would be appropriate. The report upon which the Council previously set the current rates was based upon providing a fair return to the tow contractors, as well as maintaining a steady revenue stream to the City. Staff recommends, if Council should direct an amendment of the fee resolution, that staff have a minimum of ninety days to analyze the appropriateness of any fee increase with respect to increases in the costs of fuel, labor or other inflationary factors with respect to specific fees and costs of the contractor, and to determine what impact any changes would have on revenue to the City and costs to the general public and a fair return to the tow contractors.

COORDINATION

This memorandum has been coordinated with the City Manager's Office, the Department of Transportation and the City Attorney's Office.

CEQA

Not a project.



JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement