

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Del D. Borgsdorf

**SUBJECT:** SEE BELOW

**DATE:** June 17, 2005

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**SUBJECT: PUBLIC HEARING ON RECYCLE PLUS RATE INCREASES AND  
ADOPTION OF RESOLUTIONS REVISING RECYCLE PLUS RATES  
AND COMMERCIAL FRANCHISE FEES**

## RECOMMENDATION

It is recommended that the City Council:

1. Open the Public Hearing on the Recycle Plus program rate increases effective August 1, 2005, and on potential increases for Fiscal Years 2006-07 and 2007-08, for purposes of collecting public comment only and continue the Public Hearing and Council discussion and action on the matter to the August 30, 2005 City Council meeting;
2. Defer Council discussion and action on the following recommendations to the August 30, 2005 City Council meeting:
  - (a) Resolution revising Recycle Plus rates for integrated waste management services beginning August 1, 2005, increasing single-family rates by approximately 3% and multi-family rates by approximately 2%;
3. Adopt a resolution revising the Commercial Solid Waste Collection Franchise Fee for services performed on or after August 1, 2005, as follows:
  - (a) For each uncompacted cubic yard of solid waste collected, increase the Franchise Fee from \$3.34 to \$3.49 per cubic yard.
  - (b) For each compacted cubic yard of solid waste collected, increase the Franchise Fee from \$10.02 to \$10.47 per cubic yard.
  - (c) Revise the exemption from the Franchise Fee from the first 20,900 to the first 20,000 cubic yards of uncompacted solid waste (or equivalent of compacted solid waste) collected in any fiscal year (July 1 through June 30) for haulers that do not provide front loader service.
  - (d) For each ton of solid waste collected by Green Team of San Jose in roll-off containers and compactors pursuant to the Agreement for Solid Waste Collection Services at City Facilities for which franchise fees are required to be charged by weight rather than volume, adjust the Franchise Fee to be \$58.17 per ton.

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**BACKGROUND**

The Recycle Plus program provides garbage collection and disposal, collection and processing of recyclables and yard trimmings, and street sweeping services to San Jose residents. Beginning on May 2, 2005, Proposition 218 notices were mailed to about 208,000 single-family (SFD) and multi-family (MFD) residential property owners advising them of potential rate increases of up to 5% in Fiscal Year 2005-06. Additionally, owners were advised of potential SFD and MFD rate increases of up to 5% in Fiscal Years 2006-07 and 2007-08. Attachment A of this report provides detailed information of the proposed rate increases for the Recycle Plus program and Commercial Solid Waste Collection Franchise Fees.

As part of the noticing process, property owners were advised in the proposed rate increase notice that they could submit written protests through the close of the public hearing on June 21, 2005. In addition to the written protest deadline, the purpose of the Public Hearing was to obtain public comment at the June 21, 2005 City Council meeting.

**ANALYSIS**

This week, the Santa Clara County Civil Grand Jury transmitted a final report related to a contract amendment with Norcal Waste Systems, Inc. (Norcal). In response to that report, on June 15, 2005, Mayor Ron Gonzales released a memorandum to the Rules Committee requesting a full response to the report and recommending authorization for the City Attorney to retain an independent investigator to review the matter (and report back findings within the same time frame that the response to the Grand Jury is considered). The Rules Committee will not consider the Mayor's memorandum until June 22, 2005.

The Administration requests that the City Council open the Public Hearing on Recycle Plus program rate increase proposals effective August 1, 2005, and for Fiscal Years 2006-07 and 2007-08, for purposes of collecting public comment only and continue the Public Hearing and Council discussion and action on the matter to the August 30, 2005 City Council meeting (see Recommendation No. 1). In addition, the Administration requests that the City Council defer action on the resolution regarding Recycle Plus program rate increases until August 30, 2005 (see Recommendation No. 2).

Approval of this recommendation would:

- Allow the Rules Committee to consider the Mayor's memo prior to any action on the Recycle Plus program rate increase proposal;
- Provide the City Council with an opportunity to discuss and gather additional information about facts related to the issues covered in the Grand Jury Report, and allow Council to consider an official response to the Grand Jury report;
- Preserve the City Council's ability in the future to consider and act on any rate increases without necessitating that staff conduct another extensive public noticing effort or incur the additional cost of more than \$100,000 to re-notice the issue at a later date.

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**Recycle Plus Program**

Continuance of Council consideration and action on the Recycle Plus program rate increase proposal, at this time, does not jeopardize the current rate structure. With approval of staff's recommendation, staff will return in August with a current report on the status of the rates and the Integrated Waste Management Fund (IWM). The IWM Fund supports residential, commercial and civic solid waste activities, including various contracts for collection, processing and disposal.

**Commercial Solid Waste Collection Franchise Fees**

Staff is recommending that the City Council proceed with its consideration of the Commercial Solid Waste Collection Franchise Fees. It is important to clarify that the Commercial Solid Waste Collection Franchise Fees are not related to the Recycle Plus program fees. If Council does not act on the Commercial Solid Waste Collection Franchise Fees portion of the recommendation (see Recommendation No. 3), it would result in a loss of revenue in the coming fiscal year from the commercial side of our customer base.

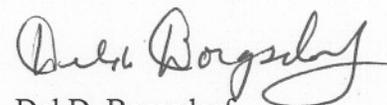
The Commercial Solid Waste Collection Franchise Fees reflect the amount of money collected from franchise holders that collect solid waste from business establishments. Commercial Solid Waste Collection Franchise holders provide solid waste collection services to businesses. Franchise holders establish individual contractual relationships with each particular customer business. Collection service is accomplished through pre-positioning of multi cubic yard containers that are then removed for content disposal on a prearranged service schedule. The Recycle Plus program serves single-family and multi-family residential property owners and does not provide service to business establishments.

**COORDINATION**

This memo has been coordinated with the Department of Environmental Services and the City Attorney's Office.

**CEQA**

Not a project.



Del D. Borgsdorf  
City Manager

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## **ATTACHMENT A**

### **RECYCLE PLUS PROGRAM**

The Recycle Plus program provides garbage collection and disposal, collection and processing of recyclables and yard trimmings, and street sweeping services to San Jose residents. In order to ensure adequate funding for these activities, a revision of the 5-Year Rate Strategy previously presented to the City Council as part of the FY 2004-05 budget process is proposed. The Recycle Plus and disposal contracts contain provisions for annual adjustments based on changes in indices published by the U.S. Bureau of Labor Statistics (BLS). The most volatile index, for diesel fuel, increased 38% in 2004. To cover the rising contractor costs reflected in the BLS indices, it is estimated that Recycle Plus contract costs will increase between 4.8% and 6.7 % in FY 2005-06, depending on the particular contract and the final data provided by BLS. Additionally, disposal costs at Newby Island Landfill will increase due to the indexed annual adjustment and rising regulatory costs. In FY 2005-06, disposal costs are expected to increase by as much as 15%. Overall, contractual expenditures in the IWM Fund are anticipated to increase by 7.5%, or \$4.5 million. Because of these increases, and in keeping with the key goal of IWM to bring programs to cost recovery, a moderate rate increase is recommended for both single-family and multi-family rates in FY 2005-06.

#### **Recycle Plus Rates**

Although expenditures are estimated to increase by 7.5 % increase in FY 2005-06, fund balance reserves will permit a significantly lower customer rate increase than this amount. The proposed increases of approximately 3% in SFD rates, and 2% in MFD rates, would generate an estimated \$1.7 million in additional revenue in FY 2005-06, and would partially fund the anticipated expenditure increase of \$4.5 million. The remaining \$2.8 million of additional expenditures would be funded by existing fund balance reserves. The additional revenue generated by the proposed rate increases would help bring the Recycle Plus program closer to cost recovery and would also serve to stabilize fund balances in the out-years. Moderate rate increases are projected for the out-years in order to maintain this program at cost recovery and maintain an overall fund balance equal to approximately one month's operating expenditures for the Recycle Plus and disposal contracts.

A SFD increase of approximately 3% would amount to an additional \$0.60 per month for the standard 32-gallon garbage cart, increasing the rate from \$18.30 to \$18.90. Even with this increase, San Jose rates would remain below the countywide average of \$19.34 per month based on a survey of Santa Clara County cities undertaken in August 2004. Similarly, even with a 2% increase in multi-family rates, the proposed rate for a 3-cubic yard bin serviced once per week (one of the most common multi-family service levels) will be \$153.68 per month, far lower than the countywide average of \$211.57 per month, based on an April 2005 survey prepared by the City of Santa Clara.

A modification to the rate resolution is also proposed to include the collection of cathode ray tubes (CRTs) at the regular three-item rate in the Recycle Plus Large Item collection program. In

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FY 2003-04, new State regulations necessitated a restructuring of the Recycle Plus large item collection rate to provide funding for the proper recycling of CRTs, including those in televisions and computer monitors. The City Council approved a restructuring that excluded the collection of a CRT as one of three eligible large items in the large item collection package and, instead, offered the collection of a single CRT at the full three-item rate. Recently, alternative funding sources have been made available to CRT recyclers by the State, which allows the City to again include CRTs in the collection package as one of three eligible large items, thereby passing the City's processing savings back to San Jose residents.

**COMMERCIAL SOLID WASTE FRANCHISE FEES**

Franchise Fees are fees paid by the commercial haulers for using City streets and infrastructure in the conduct of their business. These fees are paid to the General Fund and are not dedicated or property-related. In order to offset rising costs and decreases in General Fund revenue associated with reduced waste generation and disposal, the Commercial Solid Waste Franchise Fee is proposed to be increased by \$0.15, from \$3.34 to \$3.49 per cubic yard. It is estimated that the proposed increase to the Franchise Fee will generate an additional \$460,000 in revenue to the General Fund in FY 2005-06.

Currently, the first 20,900 cubic yards of material collected in a fiscal year are excluded from the Franchise Fee for those haulers that do not provide front loader service. Based on the recommended increase to \$3.49 per cubic yard, it is proposed that there be a corresponding decrease in the cubic yard exemption from 20,900 cubic yards to 20,000 cubic yards. This change in the Franchise Fee cubic yard exemption maintains the historic \$70,000 exemption for each qualifying hauler. This exemption is an economic incentive to level the playing field for small haulers, which in turn helps to maintain competitive pricing for services in the commercial sector.

GreenTeam of San Jose performs commercial solid waste collection at City facilities pursuant to a contract approved by Council on June 29, 1999. The final option year for this agreement is FY 2005-06. For collections made in roll-off containers and compactors, the contract provides for GreenTeam to pay the Franchise Fee on a weight basis, rather than on a volume basis. It is recommended that the Franchise Fee be adjusted to a weight-based fee of \$58.17 per ton for these collections. The recommended adjustment to this rate is intended to keep the weight-based fee proportionate to the volume-based fee, reflecting both the increase in the volume-based fee and a slight decrease in waste densities.

**PUBLIC OUTREACH**

**Prop. 218 Notifications and Letters of Protest**

Beginning May 2, 2005, Proposition 218 Public Notices were mailed to over 208,000 single-family and multi-family residential property owners advising them of potential SFD and MFD rate increases of up to 5% in Fiscal Year 2004-05. Additionally, owners were advised of potential SFD and MFD rate increases of up to 5% in Fiscal Years 2006-07 and 2007-08. Property owners were advised in the notice that they could submit written protests of the proposed rate increases

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through the close of the public hearing on June 21, 2005. A notice was also placed in the Post Record in early June to further advise all San Jose residents of the impending hearing.

An interim count as of May 23, 2005, shows that the City Clerk's Office has received 297 responses to the Proposition 218 notification. Eleven of those responses were requests for address or title corrections. Of the remaining 286 protests to date, a breakdown by category of protest is shown below.

**TABLE #3**

<b># Protest Letters Received (As of 5/23/05)</b>	<b>%</b>	<b>Protest Category</b>
241	84%	General Protest – No specific reason given for protest
36	13%	Cites economic downturn/hardship as reason for protest
9	3%	Cites poor service as reason for protest
286	100%	
<1%		<b>% San Jose Property Owners Protesting Rate Increase</b>

**Tri-County Apartment Association (TCAA)**

ESD staff informed TCAA of potential multi-family rate increases on April 25, 2005. Staff also provided extensive background information to TCAA explaining the need for the proposed increases so they would be better prepared to respond to their members. Staff remains available to meet with TCAA should they have additional concerns or questions.

**Phone Call Protests**

In response to the rate notification letter, the City's Call Center and Recycle Plus customer service representatives have received approximately 207 phone calls to date. When callers ask what they can do to protest, they are advised that property owners can submit a written protest to the Clerk's Office at any time prior to the close of the public hearing on June 21, 2005.

**Commercial Outreach**

Commercial solid waste exemption and Franchise Fee increases for FY 2005-06 were discussed with commercial solid waste haulers at a meeting held on May 18, 2005. The haulers expressed neither support nor opposition to the proposed changes.

