



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT: REPUBLIC SERVICES  
SOLID WASTE RATES**

**DATE:** April 24, 2023

Approved

Date

5/2/23

## **RECOMMENDATION**

- (a) Conduct a Public Hearing to confirm that the proposed Maximum Commercial Solid Waste Services Rates for 2023-2024 are consistent with the terms of the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement between the City of San José and Allied Waste Services of North America, LLC, dba Republic Services.
- (b) Adopt a resolution to increase the Maximum Commercial Solid Waste Services Rates in the City of San José for 2023-2024 by 6.31 percent pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement between the City of San José and Allied Waste Services of North America, LLC, dba Republic Services, including the total costs for organics processing services.

## **SUMMARY AND OUTCOME**

Approval of the recommendation will increase the maximum commercial solid waste service rates for Fiscal Year 2023-2024 by 6.31 percent.

## **BACKGROUND**

Allied Waste Services of North America, LLC dba Republic Services (Republic Services) has an exclusive franchise agreement with the City of San José to provide solid waste collection and processing services to the commercial sector (Franchises Agreement).<sup>1</sup> The Franchises Agreement was amended and restated and has a term end date of June 30, 2032. The City also has an agreement with Zero Waste Energy Development Company (ZWED) to provide organics processing services for the organics collected under this system.

<sup>1</sup> Republic has a franchise to conduct commercial solid waste services in both geographic collection districts, North and South, effectively giving them a citywide franchise.

Republic Services' Commercial Solid Waste collection program, which serves approximately 8,000 business accounts citywide, was designed and is required to ensure collected waste is processed and recycled to its highest and best use. Waste is separated into three categories: 1) wet or organic material such as food waste or plant trimmings, 2) dry material such as clean paper or plastic, and 3) customized source separated recycling material such as cardboard, paper, or glass. Customers choose the bin type(s) which work best for their businesses and are provided consistent rates across the City, access to a service representative who provides ongoing technical assistance, and online access to billing and service data. The system also provides the City and businesses the opportunity to comply with statewide recycling and organics diversion requirements.

Under San José Municipal Code Section 9.10.1695 and the Franchises Agreement, Republic Services may apply for an adjustment to the maximum commercial solid waste services rates once a year. Under the San José Municipal Code, any request to adjust the existing maximum service rate must be in accordance with the application process, methodology, and other factors specified in the Franchises Agreement. The City Council may also conduct a public hearing to confirm that the proposed maximum service rates are consistent with the terms of the Franchises Agreement. The franchisee must provide all customers with advance written notice of changes to the maximum customer service rates at least 30 calendar days prior to the effective date of the change.

Customer service rates vary based on the material type collected, container type and size, and frequency of collection. The rates are set and adjusted each year to satisfy Republic Services' annual revenue requirement under the Franchises Agreement, which is the dollar amount needed to fund the cost of operations, including collection equipment and labor, recyclables processing equipment and labor, compensation to ZWED for organics processing service, and payment of Government Fees (Franchise Fees and Source Reduction and Recycling Fees) to the City. Per the Franchises Agreement, the revenue requirement also allows Republic Services to calculate its profit for the coming rate year by dividing the anticipated total annual cost of operations for the coming rate year by a set ratio and subtracting the same total annual cost of operations from the result. City staff reviews the commercial solid waste service rates application for accuracy and verifies the numbers against the monthly reports submitted by Republic Services.

Section 10.4 of the Franchises Agreement allows for two rate adjustment methods: index-based or cost-based. Under Section 10.4.2 of the Franchises Agreement, either the City or the franchisee may request the use of the cost-based method in specified years (years 10, 11, 12, 16). Under Section 10.4.1 of the Franchises Agreement, if neither the City nor the franchisee request the cost-based method, then the index-based adjustment method must be applied. The index-based adjustment involves various cost adjustment factors such as the percentage change in the Consumer Price Index – for urban wage earners and percentage change in the Organics Processing Fee paid to the organics processing contractor to calculate the new revenue requirement and new maximum service rates. During the index-based adjustment process, changes are made to calculated costs of the then-current year. Adjustments are not made to reflect actual costs, actual changes in wages and benefits, actual changes in customer account data and service levels, or other actual changes. The total increase to maximum service rates in

any given year may not exceed six percent; provided, however, this six percent cap shall not apply to the extent the maximum service rates are increased due to increases in the Organics Processing Fee, Government Fees (Franchise Fees and Source Reduction and Recycling Fees), changes in law, or City-directed changes in franchisee's scope of work.

The adjustment methodologies are designed to protect both the customers and the franchisee by limiting the annual increase allowed and ensuring Republic Services is compensated appropriately as operating expenses fluctuate from year to year. Both the Franchises Agreement and ZWED agreement include annual inflationary adjustments.

### **ANALYSIS**

Pursuant to Section 10.4.1 of the Franchises Agreement because neither party requested a cost-based adjustment, the index-based adjustment method must be used. The rate year 12, which is the current year 2023, application uses the United States Bureau of Labor Statistics Consumer Price Index data from October 31, 2021 through November 1, 2022, to calculate the rate year 12 rates, which take effect from July 1, 2023 to June 30, 2024. Republic Services proposed a 6.48 percent increase for the 2023-2024 commercial service rates to satisfy its proposed annual revenue requirement amount of \$82,421,485. However, staff found that Republic Services had a slight discrepancy in the annual tons delivered to ZWED based on reports provided to the City. Staff assessed the proposed annual revenue requirement and revised the rate adjustment to be 6.31 percent based on the Franchises Agreement requirements and the assumed inflationary adjusted costs of collection and processing operations (as discussed, the six percent cap does not apply to certain fees).

The proposed maximum rates, effective July 1, 2023, are detailed in the resolution accompanying this report. In addition to collection services, the 6.31 percent rate increase impacts all associated commercial rates including bin cleaning, bin locks, pushing and pulling containers into a serviceable position by the truck drivers, and delivery of containers. In accordance with ZWED's contract and the Franchises Agreement, the resolution also includes a cost of living adjustment of 5.50 percent to the rates paid to ZWED by Republic Services for organics processing as allowed in ZWED's agreement with the City.

For rate year 12, the annual revenue requirement amount is proposed at \$82,288,957. Of this amount, \$34,169,954 is for Republic Services' operations and applicable cost of living adjustments, which comprises 1.57 percent of the total rate adjustment for rate year 12. The Newby Island Resource Recovery Park Processing Cost is proposed at \$10,634,406, an increase of \$745,016 from the previous year and is 0.96 percent of the total rate adjustment for 2023-2024. The ZWED portion of the revenue requirement is \$18,513,582, an increase of \$965,165 from the previous year, representing 1.25 percent of the increased rate, which covers the cost of anaerobically digesting the organic material.

Government fees equaling \$17,920,008 include a Franchise Fee of \$14,020,008 to the General Fund and a Source Reduction and Recycling Fee of \$3,900,000 to the Integrated Waste

Management Fund. The Franchise Fee is charged to Republic Services for use of City property in providing solid waste services in both San José’s North and South Service Districts; it funds services in the General Fund and may be adjusted each year based on the Consumer Price Index. The Source Reduction and Recycling Fee funds several City functions related to the implementation of the City’s Integrated Waste Management Plan including: oversight, administration, and enforcement of the City’s commercial solid waste system; a portion of ZWED residue disposal; and targeted commercial sector waste diversion programs, including technical assistance for recycling and outreach. The Source Reduction and Recycling Fee may be adjusted each year based on the operating needs of the City and is set at \$3,900,000 for 2023-2024, as shown in the 2023-2024 Proposed Fees and Charges Report. Overall, the Government Fees portion of the rate increase will be adjusted by \$1,038,519, which comprises 1.34 percent of the total rate adjustment for 2023-2024. Under Section 10.4.1 of the Franchises Agreement, the six percent maximum service rates cap does not apply to the 1.34 percent portion of the increase in Government Fees nor to the 1.25 percent portion of the increase in ZWED Organics Processing Fee. Finally, Direct Disposal Costs are increasing \$922,696, from \$128,311 to \$1,051,007, with a rate impact of 1.19 percent because it reflects one full year of disposal costs since the Amended and Restated Agreement took effect in May 2020.

The table below summarizes the components of the overall increase of 6.31 percent for 2023-2024.

<b>Adjustment</b>	<b>2022-2023</b>	<b>Annual Change</b>	<b>2023-2024</b>	<b>Rate Impact</b>
Republic Costs of Operations	\$32,959,034	\$1,210,920	\$34,169,954	1.57%
Newby Island Resource Recovery Park Processing Costs	\$9,889,390	\$745,016	\$10,634,406	0.96%
ZWED Organics Processing Fee	\$17,548,419	\$965,163	\$18,513,582	1.25%
Government Fees	\$16,881,489	\$1,038,519	\$17,920,008	1.34%
Direct Disposal Costs	\$128,311	\$922,696	\$1,051,007	1.19%
<b>Total Revenue Requirement</b>	<b>\$77,406,643</b>	<b>\$4,882,314</b>	<b>\$82,288,957</b>	<b>6.31%</b>

Following the recommended rate increase, the City’s commercial solid waste rates will remain lower than average compared to rates charged elsewhere in the San Francisco Bay Area. The **Attachment** – Rate Comparison by City - compares San José’s proposed maximum rates for two common service levels with the 2022-2023 rates from nearby jurisdictions. Most neighboring cities will be proposing an increase for their commercial rates (available in May 2023).

### **EVALUATION AND FOLLOW-UP**

The Commercial Solid Waste Franchise Fee and Source Reduction and Recycling Fee are included in the 2023-24 Proposed Operating Budget which is scheduled to be released on May 1, 2023 and the 2023-2024 Proposed Fees and Charges Report which is scheduled to be released on May 5, 2023.

### **COST SUMMARY/IMPLICATIONS**

It is estimated the commercial solid waste rate increase will generate approximately \$17,920,008 in revenue for the City which includes approximately \$3,900,000 from Source Reduction and Recycling Fees in the Integrated Waste Management Fund and \$14,020,008 from the Franchise Fees in the General Fund. The additional revenue has been assumed in the 2023-2024 Proposed Operating Budget Statement of Source and Use of Funds for the Integrated Waste Management Fund and General Fund. Proposed increased revenue will fund increased costs related to management and administration of the Franchises Agreement and associated service agreements for the Commercial Solid Waste program that have increased due to inflation and cost of living increases.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and City Manager's Budget Office.

### **PUBLIC OUTREACH**

Republic Services is required to notify all customers in writing of the rate change at least 30 days before the effective date.

This memorandum will be posted on the City's Council Agenda website for the May 16, 2023 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation is associated with this action.

### **CEQA**

Not a Project, File No. PP17-005, CEQA Guidelines Section 15273, Rates, Tolls, Fares, and Charges.

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**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

KERRIE ROMANOW

Director, Environmental Services

The principal author of this memorandum is Valerie Osmond, Deputy Director, Environmental Services Department. For questions, please contact Valerie.Osmond@sanjoseca.gov or (408) 535-8557.

**ATTACHMENT:** Rate Comparison by City

## ATTACHMENT

### Rate Comparison by City

Two common commercial container sizes and prices from several Santa Clara County and nearby cities are shown in the table below. Services included with these rates vary from city to city. Not all cities' rate increases were available as of the date of this memorandum.

Rates are from July 1, 2022 to June 30, 2023 (unless otherwise stated).

City	3 Cubic Yard Container Collected Once Per Week (monthly rate)	City	40 Cubic Yard Container (per collection)
<b>San Jose Current</b>	<b>\$250.71</b>	Morgan Hill	\$967.95
Fremont*	\$258.79	Fremont*	\$1,007.21
<b>San Jose Proposed</b> (Effective July 1, 2023)	<b>\$266.53</b>	<b>San Jose Current</b>	<b>\$1,016.18</b>
Milpitas**	\$298.68	<b>San Jose Proposed</b> (Effective July 1, 2023)	<b>\$1,080.30</b>
Cupertino†	\$301.94	Gilroy	\$1,087.16
Mountain View	\$360.20	Santa Clara	\$1,129.97
Campbell	\$375.65	Campbell	\$1,146.89
Gilroy	\$386.64	Monte Sereno	\$1,153.73
Santa Clara	\$398.92	Saratoga	\$1,187.13
Morgan Hill	\$420.44	Palo Alto	\$1,227.59
Los Gatos	\$466.89	Cupertino†	\$1,289.05
Sunnyvale	\$470.29	Los Gatos	\$1,289.89
Monte Sereno	\$498.92	Los Altos	\$1,234.06
Palo Alto	\$504.40	Milpitas**	\$1,381.18
Saratoga	\$536.00	Sunnyvale	\$1,384.03
Los Altos‡	\$538.14	Mountain View	\$1,424.15

\* From January 1, 2022 to December 31, 2023

\*\* From January 1, 2023 to December 31, 2023

† From February 1, 2023 to January 31, 2024

‡ Includes appropriate level of recycling and organics for no additional charge