



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

**SUBJECT: REPUBLIC SERVICES
SOLID WASTE RATES**

DATE: May 4, 2022

Approved

Date

5/4/2022

RECOMMENDATION

- (a) Conduct a Public Hearing to confirm that the proposed Maximum Commercial Solid Waste Services Rates 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 increasing the Maximum Commercial Solid Waste Services Rates in the City of San José by 7.80 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.

OUTCOME

Approval of the recommendation will increase the maximum commercial solid waste service rates for fiscal year 2022-2023 by 7.80 percent.

BACKGROUND

The City of San José (City) has granted Republic Services an exclusive franchise to provide solid waste collection and processing services to the commercial sector.¹ 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.

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)

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

organic material such as food waste or plant trimmings, 2) non-organic garbage material such as take-out containers or dirty plastic films, and 3) recycling material such as cardboard, paper, or aluminum cans. Customers choose the bin type(s) which works best for their business 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 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.

The Franchises Agreement allows for two rate adjustment methods: index-based or cost-based. Under the agreement, either the City or the franchise may request the use of the cost-based method in specified years (Years 10, 11, 12, and 16). Otherwise, the index-based method is applied. The Franchises Agreement includes methodologies for adjusting customer rates annually with specific controls limiting the costs that can be considered and the total annual adjustment amount allowed, which may not exceed six percent in any given year net of any Government Fees (Franchise Fees and Source Reduction and Recycling Fees), Organics Processing 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.

Under the City's respective agreements, the City is authorized to assess liquidated damages to Republic Services and ZWED. Staff monitors performance and provides related updates to

Republic and ZWED on a quarterly basis. Performance standards weighed in this assessment include failure to meet the City's diversion targets, failure to resolve customers' issues in a required timespan, and call center performance requirements, among others. For the past calendar year (January 1, 2021 – December 31, 2021), the City may assess Republic and ZWED \$277,400 and \$100,000, respectively, in liquidated damages.

ANALYSIS

Since neither party requested a cost-based adjustment, the Rate Year 11 application uses Bureau of Labor Statistics Consumer Price Index data from October 31, 2020, through November 1, 2021, to calculate the Rate Year 11 rates, which take effect from July 1, 2022, to June 30, 2023. Republic Services proposed a 7.38 percent increase for the 2022-2023 commercial service rates to satisfy its proposed annual revenue requirement amount of \$77,101,945. Staff assessed the proposed annual revenue requirement and revised the rate adjustment to be 7.80 percent based on the Franchises Agreement requirements, the assumed inflationary adjusted costs of collection and processing operations, and changes in the Source Reduction and Recycling (SRR) Fee. The 0.42 percent difference in rates will help support and expand City waste reduction programs and provide further resources businesses rely on to ensure continued compliance.

The proposed maximum rates effective July 1, 2022, are detailed in the resolution accompanying this report. In addition to collection services, the 7.80 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 3.00 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 11, the annual revenue requirement amount is proposed at \$77,406,537. Of this amount, \$32,959,034 is for Republic Services' operations and applicable cost-of-living adjustments, which comprises 1.18 percent of the total rate adjustment for Rate Year 11. The Newby Island Resource Recovery Park (NIRRP) Processing Cost is proposed at \$9,889,390, an increase of \$2,532,640 from the previous year and is 3.53 percent of the total rate adjustment for 2022-2023. The ZWED portion of the revenue requirement is \$17,548,313, an increase of \$511,116 from the previous year, which covers the cost of anaerobically digesting the organic material.

Government Fees equaling \$16,881,489 include a Franchise Fee of \$12,981,489 to the General Fund and an SRR 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 SRR 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 SRR Fee may be adjusted each year based on the operating needs of the City and is set at \$3,900,000 for 2022-2023, as shown in the 2022-2023 Proposed Fees and Charges Report. Overall, the Government Fees portion of the rate increase will be adjusted by \$1,582,742, which comprises 2.20 percent of the total rate adjustment for 2022-2023.

The table below summarizes the components of the overall increase of 7.80 percent for 2022-2023.

<u>Adjustment</u>	<u>2021-2022</u>	<u>Annual Change</u>	<u>2022-2023</u>	<u>Rate Impact</u>
Republic Costs of Operations	\$32,110,770	\$848,264	\$32,959,034	1.18%
NIRRP Processing Costs	\$7,356,750	\$2,532,640	\$9,889,390	3.53%
Organics Processing Fee	\$17,037,197	\$511,116	\$17,548,313	0.71%
Government Fees	\$15,298,747	\$1,582,742	\$16,881,489	2.20%
Direct Disposal Costs	\$ 0	\$128,311	\$128,311	0.18%
Total Revenue Requirement	\$71,803,464	\$5,603,073	\$77,406,537	7.80%

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. Attachment A compares San José's proposed maximum rates for two common service levels with the 2021-2022 rates from nearby jurisdictions. Most neighboring cities will be proposing an increase for their commercial rates (available in May 2022).

CONCLUSION

Republic Services may bill customers at the maximum customer service rates and in 2022-2023 will retain \$42,976,735 of the \$77,406,537 to fund the cost of its operations. Republic Services will remit the remaining balance of \$34,429,802 between the City (\$16,881,489) as part of the Government Fees, and ZWED (\$17,548,313) for organics processing services.

For the Government Fees portion (\$16.88 million), the 2022-2023 Proposed Operating Budget includes anticipated revenue of \$3.9 million for SRR Fees in the Integrated Waste Management Fund. Of this amount, \$371,748 will be retained by Republic Services to pay for the disposal of ZWED processing residue. The remaining \$3,528,252, as reflected in the Integrated Waste Management Fund source and use of funds, will be used for associated costs within the Environmental Services Department related to management and administration of the Franchises Agreement and associated service agreements for the Commercial Solid Waste program.

EVALUATION AND FOLLOW-UP

The Commercial Solid Waste Franchise Fee and SRR Fee are included in the 2022-2023 Proposed Operating Budget which was released on May 4, 2022, and the 2022-2023 Proposed Fees and Charges Report which is scheduled to be released on May 6, 2022.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

Under the San José Municipal Code, the commercial collection franchisee may apply for an adjustment once per year and any adjustment shall be done in accordance with the application process, methodology, and other factors specific in the franchise agreement. The City Council may conduct a public hearing to confirm that the proposed maximum service rates are consistent with the terms of the franchise agreement.

If the recommendations are not approved by City Council, the 2022-2023 rates will stay the same as the 2021-2022 rates. Republic Services will not receive an increase of \$3,509,215, ZWED will not receive an increase of \$511,116, and the Franchise Fee and SRR Fee will not increase by a combined total of \$1,582,742.

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 website for the May 17, 2022 City Council meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The additional revenue generated by the recommended rate increase aligns with City Council policy that programs be self-supporting whenever possible.

COST SUMMARY/IMPLICATIONS

It is estimated the Commercial Solid Waste rate increase will generate approximately \$16,881,489 in revenue for the City which includes approximately \$3,900,000 from SRR Fees in the Integrated Waste Management Fund and \$12,981,489 from the Franchise Fees in the General Fund. The additional revenue has been assumed in the 2022-2023 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.

CEQA

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

/s/
KERRIE ROMANOW
Director
Environmental Services Department

For questions, please contact Valerie Osmond, Deputy Director, Environmental Services Department, at 408-535-8557.

Attachment A: Rate Comparison by City

ATTACHMENT A 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 7/1/2021-6/30/2022 (unless otherwise stated).

City	3 Cubic Yard Container Collected Once Per Week (monthly rate)		City	40 Cubic Yard Container (per collection)
San José Current	\$232.57		Morgan Hill	\$869.25
San José Proposed (Effective July 1, 2022)	\$250.71		San José Current	\$942.65
Fremont*	\$258.79		Gilroy	\$961.11
Milpitas**	\$279.14		Fremont*	\$1,007.21
Cupertino†	\$301.94		San José Proposed (Effective July 1, 2022)	\$1,016.18
Mountain View	\$339.80		Campbell	\$1,054.56
Gilroy	\$341.44		Los Gatos	\$1,054.56
Campbell	\$345.24		Monte Sereno	\$1,054.56
Morgan Hill	\$377.57		Saratoga	\$1,054.56
Santa Clara	\$389.02		Santa Clara	\$1,129.97
Los Gatos	\$428.02		Milpitas**	\$1,197.84
Palo Alto	\$437.20		Palo Alto	\$1,227.59
Sunnyvale	\$446.54		Cupertino†	\$1,227.67
Monte Sereno	\$459.06		Los Altos***	\$1,234.06
Saratoga	\$490.44		Sunnyvale	\$1,325.73
Los Altos‡****	\$538.14		Mountain View	\$1,343.50

* From 1/1/2022 to 12/31/2023

** From 1/1/2022 to 12/31/2022

*** From 7/1/2022 to 6/30/2023

† From 2/1/2022 to 1/31/2023

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