

# Memorandum

**TO:** THE HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Councilmember Lan Diep  
Councilmember Dev Davis

**SUBJECT:** MODIFIED LIVING WAGE FOR  
RECYCLE PLUS GARBAGE &  
RECYCLING CONTRACTS

**DATE:** 1/11/2019

Approved



Date

1/11/19

## RECOMMENDATION

Accept Staff's reports but decline to direct Staff to negotiate the inclusion of a modified living wage requirement in future residential garbage and recycling agreements for the Recycle Plus program.

## BACKGROUND

In June of this year, the Council approved Recycle Plus rate increases of 3% on single-family households and 2% on multi-family households for the 2018-2019 fiscal year. Previously, Recycle Plus rates were increased by 3.5% for single-family dwellings and 4.5% for multi-family dwellings for the 2017-2018 fiscal year. Recycle Plus rates will most likely go up again for the 2019-2020 fiscal year and each fiscal year after that. In addition to annual rate increases on the Recycle Plus program, the Council also annually approves increases on sewer service and use charge rates and Muni Water rates, among others.

In December 2017, the Council directed staff to return with a methodology to calculate a modified living wage (MLW) for Recycle Plus facility workers, which includes materials recovery facility (MRF) workers, customer service representatives, and mechanics. Approximately, 200 workers would be affected by a MLW policy.

Whereas a minimum wage is a legal requirement that sets the basic rate of pay employers must pay workers, a living wage is the rate of pay a worker must earn to afford the local costs of living in an area. The City of San José has a Living Wage Policy that establishes bright line rules for who is eligible to receive a living wage:

Any person employed by the contractor or any subcontractor, notwithstanding the location of the person, who:

1. Is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
2. Expends at least half of his or her time on work for the City;

3. Is at least eighteen (18) years of age; and
4. Is not in training for the period of training specified under training standards approved by the City.

Because recyclable material is brought to MRFs from various cities and comingled before being sorted and recycled, it is difficult to precisely measure how much time an individual employee spends in service of San José. While on any given day, an employee at the MRF might spend more than 50% of his or her time sorting San José's recyclables, Staff estimates that on average, a sorter at the GreenWaste MRF spends 45.71% of his or her time in service of San José.

Forty-five point seven one percent is short of the 50% time requirement outlined in our Living Wage Policy. Staff proposes using the 45.71 percentage to establish a modified living wage, granting MRF workers a discounted living wage. This percentage reflects the time of sorters, but would also be applied to benefit customer service representatives and mechanics who spend a different proportion of their time for the benefit of San José.

If the modified living wage is adopted as proposed, it would increase costs by \$3 million, which will likely be passed through to Recycle Plus rate payers.

### **ARGUMENT**

The City of San José has a Living Wage Policy that should be honored. That policy plainly states that workers who spend at least half (50%) of their time working for the benefit of San José are entitled to a living wage. Staff has established that MRF workers at GreenWaste spend an average of 45.71% of their time in service of San José. This falls short of triggering the Living Wage Policy. Measuring the time sorters spend on San José's waste is impractical and would require separate facilities to sort only San José's material.

The Council should not create a special carve-out for MRF workers on the belief that 45.71% is not 50%, but it's close enough for government. It would be arbitrary to apply that 45.71% to customer service workers and mechanics in addition to materials sorters, when that figure only measures the workload of sorters.

This Council has in the past and must continue to stand up for our residents when there is evidence of unlawfulness, unfairness, or inequitable bargaining power. But there has been no evidence that workers at GreenWaste are unhappy with their circumstances, or that organized efforts to seek better circumstances have been thwarted by GreenWaste. The Council should not impose a solution in search of a problem.

### **CONCLUSION**

The Council should not approve a modified living wage to benefit 200 workers at a cost of \$3 million to rate payers.

**COUNCILMEMBER**  
**LAN DIEP**  
SAN JOSÉ DISTRICT 4

**DEVORA "DEV" DAVIS**  
CITY COUNCILMEMBER