



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

**SUBJECT: COMMERCIAL SOLID WASTE
CUSTOMER SERVICE RATES**

DATE: May 4, 2020

Approved

Date

5/8/20

RECOMMENDATION

- (a) Hold 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; and
- (b) Adopt a resolution increasing the Maximum Commercial Solid Waste Services Rates in the City of San José by 4.90 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 2020-2021 by 4.90 percent.

BACKGROUND

Republic Services' Wet/Dry commercial solid waste collection program, which serves more than 10,000 business sites 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) optional customized recyclable for cardboard, paper, or glass. Customers choose which bin type works best for their business and are provided with consistent rates across the City, service representatives who provide ongoing technical assistance, and online access to billing and service data. The system also provides the City and businesses with a means of complying with statewide requirements to participate in recycling and organics diversion

programs,

Under San Jose 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 Franchise 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 Franchise Agreement. Franchisee must provide all customers with advance written notice of changes to the maximum customer service rates at least thirty calendar days prior to the effective date of the change.

The maximum customer service rates vary based on the type of material 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 Zero Waste Energy Development Company (ZWED) for organics processing service, and payment of government fees such as Franchise Fees and AB939 Fees to the City. Per the Franchises Agreement, the revenue requirement also allows Republic Services a profit margin of 17 percent based on allowable operating costs related to collections. City staff reviews the Commercial Solid Waste Service Rates application for accuracy and verifies the numbers with the monthly reports submitted by Republic Services.

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 6 percent in any given year. 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.

On February 25, 2020 (City Council agenda, Item 6.2), Council delegated authority to the City Manager to negotiate and execute amended and restated agreements with Republic Services and ZWED to modify the terms for collecting and processing commercial solid waste, recyclables and organic materials, and to extend organic processing and commercial services through June 30, 2032 and to settle various claims between the City, ZWED, and Republic Services.

Additional costs related to the amended agreements would be included in a future rate year application. The amended agreements are currently structured such that ZWED will receive a flat fee payment of \$16,170,000 phased in by July 2021, adjusted annually on July 1 by the Consumer Price Index, All Urban Consumer. ZWED will receive all commercial wet material and any additional dry materials up to 105,000 tons in total by July 2021. Republic Services will process all customized recyclables and 52,000 tons of dry materials phased in by July 2021. Republic Services will receive a payment, incorporated through rate setting in future years, for

processing dry materials, adjusted annually on July 1 by the Consumer Price Index, Water and Sewer and Trash Collection Services Index, but not to exceed 3.12 percent each year. Future market changes, cost-based rate adjustments, and SB1383 implementation, however, may impact the ratepayers.

Currently, San José commercial garbage and recycling services rates are among the lowest in Santa Clara County. Attachment A provides a comparison of two common service levels, 3 cubic yard and 40 cubic yards, to other cities in the County and Bay Area.

ANALYSIS

The rate application uses Republic Services' data from October 31, 2018 through November 1, 2019, also known as Rate Year 9. The rate changes will be applied for fiscal year 2020-2021. Republic Services proposed a 4.88 percent increase to the 2020-2021 commercial service rates to satisfy their proposed annual revenue requirement amount of \$66,200,946. The revenue requirement included an AB939 fee to the City of \$2,700,000. Staff assessed the proposed annual revenue requirement and revised the rate adjustment to be 4.90 percent based on the Franchises Agreement requirements and the assumed, inflationary adjusted costs of collection and processing operations. Staff found that Republic Services included in their proposal \$187,280 in processing costs related to non-San José material. Staff have excluded those costs in the proposal below. Staff is also recommending to increase the AB939 fee for 2020-2021 by \$200,000 to provide additional education and outreach support to San José businesses.

The proposed maximum rates (with an effective date of July 1, 2020) are detailed in the resolution accompanying this report. In addition to collection services, the 4.90 percent rate increase impacts all associated commercial rates including those for bin cleaning, bin locks, pushing and pulling containers into a serviceable position by the truck drivers, and delivery of containers. The resolution also includes a cost of living adjustment of 3.50 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 9, the annual revenue requirement amount is proposed at \$66,200,946. Of this amount, \$42,354,091 is for Republic Services' operations, a portion of ZWED residue, and applicable cost of living adjustments, which comprises 1.87 percent of the total rate adjustment for Rate Year 9. The portion of ZWED residue for Rate Year 9 was \$326,941 (0.52 percent higher than the previous year). The ZWED portion of the revenue requirement is \$8,371,818, an increase of \$1,164,082 from the previous year, which covers the cost of anaerobically digesting the organic material and is 1.85 percent of the total rate adjustment for 2020-2021. The ZWED portion also includes a \$187,280 reduction in processing costs to correct for an error in Republic Services' calculation of the tonnage attributed to San José businesses.

City Fees of \$15,148,096 include a Franchise Fee of \$12,248,096 to the General Fund and an AB939 Fee of \$2,900,000 to the Integrated Waste Management Fund. The Franchise Fee is charged to Republic for use of City property in providing solid waste services in each franchise

district, and funds services in the General Fund and may be adjusted each year based on the CPI. The AB939 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 AB939 Fee may be adjusted each year based on the operating needs of the City and is set at \$2,900,000 for 2020-2021, as shown in the 2020-2021 Proposed Fees and Charges Report. Overall, the City Fees portion of the rate increase will be adjusted by \$417,749, which comprises 0.66 percent (less than one percent) of the total rate adjustment for 2020-2021. The table below summarizes the components of the overall increase of 4.90 percent for 2020-2021.

<u>Adjustment</u>	<u>2019-2020</u> <u>Total</u>	<u>Annual Revenue</u> <u>Change</u>	<u>2020-2021</u> <u>Total</u>	<u>Rate Impact</u>
Republic Contract	\$41,171,846	+\$1,182,245	\$42,354,091	+1.87%
ZWED Contract	\$7,207,736	+\$1,164,082	\$8,371,818	+1.85%
City Fees	\$14,730,347	+\$417,749	\$15,148,096	+0.66%
ZWED residue	-	+\$326,941	\$326,941	+0.52%
Total Revenue Requirement	\$63,109,929	+\$3,091,017	\$66,200,946	+4.90%

The City's Commercial Solid Waste rates will remain lower than average following the recommended rate increase 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 2019-2020 rates from 14 nearby jurisdictions.

CONCLUSION

Republic Services bills customers at the maximum customer service rates and in 2020-2021 will retain \$42.4 million of the \$66.2 million to fund the cost of their operations, which includes their guaranteed 17 percent profit margin. Republic Services will remit the remaining balance of \$23.6 million between the City (\$15.1 million) as part of the City's Fees, and ZWED (\$8.4 million) for organics processing services.

For the City Fees portion (\$15.1 million), the 2020-2021 Proposed Operating Budget includes anticipated revenue of \$2.9 million for AB939 Fees. Approximately \$350,000 of this amount will be retained by Republic Services to pay for the disposal of ZWED processing residue. The remaining \$2.55 million, as reflected in the Integrated Waste Management Fund, will be used for the associated costs within the Environmental Services Department for the management and administration of the Franchises Agreement and associated service agreements for the Commercial Solid Waste program.

In addition, as the result of a recommended CPI-based increase of 1.81 percent, it is estimated

that revenue of \$12.2 million will be received in 2020-2021 for Commercial Solid Waste Franchise Fees.

EVALUATION AND FOLLOW-UP

The Commercial Solid Waste Franchise Fee and AB939 Fee are included in the 2020-2021 Proposed Operating Budget (released May 8 2020) and 2020-2021 Proposed Fees and Charges Report (released May 12, 2020).

CLIMATE SMART SAN JOSE

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

POLICY ALTERNATIVES

Under the 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 2020-2021 rates will stay the same as the 2019-2020 rates. Republic Services will not receive an increase of \$1,182,245, ZWED will not receive an increase of \$1,161,286 and the Franchisee Fees will not increase by \$417,749.

PUBLIC OUTREACH

The Environmental Services Department sent a courtesy letter in April (Attachment B) to all businesses served under the Republic Services Franchises Agreement notifying them of a potential rate increase of up to five percent to be considered by City Council at its May 19, 2020 meeting. In addition, Republic Services is required to notify all customers in writing of the rate change at least thirty days before the effective date.

This memorandum will be posted on the City's website for the May 19, 2020 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.

CEQA

Statutorily Exempt, 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.

Attachments:

Attachment A: Rate Comparison by City

Attachment B: Commercial Solid Waste Services Rates Courtesy Letter

ATTACHMENT A

Rate Comparison by City

Two common commercial container sizes and prices from several Santa Clara County cities are shown in the table below. Services included with these rates vary from city to city. All businesses in San Jose receive wet collection service which includes organics collection such as food waste and food contaminated paper products. Dry waste includes recyclables and everything else. Not all cities' rate increases were available as of the date of this memorandum.

City	3 Cubic Yard Container Collected Once Per Week (monthly rate)		City	40 Cubic Yard Container (per collection rate)
San José Current†	\$204.39		Los Altos‡	\$782.90
San José Proposed†	\$214.40		San José Current†	\$828.45
Fremont	\$246.39		Morgan Hill	\$845.61
Santa Clara	\$261.60		San José Proposed†	\$909.55
Cupertino	\$268.88		Campbell	\$920.78
Milpitas	\$279.14		Monte Sereno	\$925.90
Campbell	\$287.54		Gilroy	\$932.82
Mountain View	\$320.25		Saratoga	\$939.76
Gilroy‡‡	\$331.39		Fremont**††	\$953.54
Average (non-San Jose)	\$340.49		Los Gatos	\$1,001.37
Los Gatos	\$346.49		Cupertino	\$1,036.59
Morgan Hill‡‡	\$367.30		Average (non-San Jose)	\$1,036.62
Monte Sereno	\$382.39		Milpitas‡	\$1,197.84
Saratoga	\$405.64		Santa Clara	\$1,206.80
Sunnyvale*	\$411.06		Palo Alto**	\$1,227.59
Los Altos	\$421.55		Mountain View	\$1,266.45
Palo Alto*	\$437.20		Sunnyvale*	\$1,274.74

* Bin rental fee plus hauling

**Includes delivery fee

**††From 1/1/2020 to 12/31/2020

† Average of the north and south district rates and average of both wet/dry

‡ Additional disposal charges exist, but not shown

‡‡ Includes optional lock/unlock and push/pull service to remove and return containers to trash enclosures. These services are extra charges in all other jurisdictions including San José.

Attachment B
Commercial Solid Waste Services Rates Courtesy Letter

Subject: Commercial Solid Waste Services Rates

Dear San José business owners and property managers:

This letter serves to inform you that the San José City Council will be reviewing a proposed change to rates for the commercial garbage and recycling services provided by Republic Services. Republic Services has proposed an increase of up to 5 percent. Any rate changes would take effect on July 1, 2020.

The San José City Council is scheduled to consider the new rates during the City Council meeting on **May 19, 2020**. The public can watch the meeting on the City's YouTube channel by visiting <https://www.sanjoseca.gov/news-stories/watch-a-meeting>. To make public comment during the meeting, email councilmeeting@sanjoseca.gov. The rate recommendation and supporting documents will be posted at www.sanjoseca.gov/CouncilAgenda by May 12, 2020.

Here are ways to lower costs:

- Right size your containers to match the amount and type of waste you produce. Schedule a FREE waste audit to evaluate your business needs. Contact Republic Services at 408-432-1234 or visit them online at www.republicservicessantaclaracounty.com.
- Donate edible food to local food banks instead of throwing it away in your wet container.
- Share containers, if possible, with your neighboring businesses. Work with Republic Services on identifying ways to share and reduce your costs.
- Learn more about waste reduction at www.sjenvironment.org/nowaste.

If you have any questions about existing rates and services, please contact Republic Services at 408-432-1234 or visit <http://local.republicservices.com/site/santa-clara-ca/san-jose/>.

Thank you,

City of San José
Environmental Services