



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: February 22, 2011

TO: Honorable Council President Young and City Council Members

FROM: Chris Gonaver, Environmental Services Department Director

SUBJECT: Waste Collection in Housing Developments With Hold Harmless Agreements

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As a part of the Mayor's comprehensive approach to addressing the projected General Fund budget deficit, and in light of the failure of Proposition D on the November 2010 ballot, City Departments were asked to review their budgets and propose options for reducing General Fund expenditures. These proposals were requested in order to minimize deeper cuts in certain services such as library, park and recreation, and fire/rescue services. As part of this effort, ESD reviewed its refuse collection services, which are funded primarily from the General Fund, in order to determine those services which are mandatory and those which are discretionary under the People's Ordinance (SDMC § 66.0127).

Refuse collection services under Hold Harmless Agreements are provided free of charge to a select group of residents on private streets. These services are entirely discretionary and may be terminated by the Mayor. The cost to the General Fund of this discretionary service is approximately \$880,000 per year. Given these facts and the significant General Fund deficit facing the City, the Mayor decided to terminate these services.

The City exercised the termination clause in the 102 Hold Harmless Agreements on February 4, 2011 to discontinue refuse, recycling and yard waste collection services to approximately 14,200 residential units located on private streets, effective July 1, 2011. The projected annual savings from the elimination of this non-core service is estimated to be \$880,000, and has been included in the proposed FY12 budget.

Background

Refuse collection services have been provided by the City at no charge to 102 residential developments with private streets under "Hold Harmless Agreements" issued between 1964 and November 1986. The City entered into the Hold Harmless Agreements as a courtesy to residents

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whose properties were located on private streets and alleys. Hold Harmless Agreements permit the City to travel over private property to collect refuse from these residents and limit the City's liability for personal injury or property damage arising in connection with those collection services. The agreements were granted on a case-by-case basis after a City staff review determined collection operations could be performed safely. The November 4, 1986 amendment to the People's Ordinance precludes the City from entering into any additional Hold Harmless Agreements.

All Hold Harmless Agreements include a clause permitting either party to terminate collection services after seven days advance written notice. Residential collection services provided under Hold Harmless Agreements are an optional, non-core service provided to only a portion of the community. It is estimated that there are 1,045 housing developments with private streets, of which only 102 receive City provided refuse collection services. Most were built after 1986, are not eligible for City provided service, and already contract with City franchised waste collection service providers.

#### Implementation Status

An informational report (11-018) was presented to the Natural Resources and Culture Committee on February 2, 2011. During the Committee meeting, it was requested that staff provide additional information identifying which developments are gated and which are mobile homes. The attached chart shows that of the 102 agreements, 20 are gated developments and five are mobile home developments.

The Committee also requested staff investigate options to lessen the financial impact on low income residents in the affected developments. The City's current franchise agreements do not require that haulers provide life-line or discounted rates for seniors or low income residents. However, a review of published collection rates of the 150 largest cities in California shows all of the major haulers providing residential collection services in the San Diego area do provide discounted rates for smaller size (32 or 64 gallon carts) or have special senior citizen rates in other communities they serve. In some cases, the use of bin service (dumpsters) lowers the cost per residential unit and is a cost-effective waste disposal option for multi-family developments.

Council member DeMaio requested an opinion from the City Attorney's Office on the authority to terminate the Hold Harmless Agreements. The City Attorney responded to that request on February 7, 2011, and a copy is attached to this memorandum.

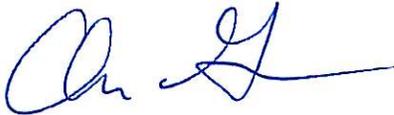
Termination notices were mailed to the Property Management firms and/or Home Owner Associations on February 4, 2011. This provides communities five months to transition to a new service provider.

Based on discussions with the City's franchised haulers, the City determined that a three to five month notice period would allow sufficient time for the Property Management firms and/or

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Home Owner Associations to transition to private service. The franchised haulers were also provided a list of affected Home Owners' Associations on February 14, 2011, to assist in a smooth transition of service.

The City will continue to work with the affected developments, residents, and private franchised haulers in the coming months to facilitate a smooth transition to new waste collection service providers in the affected communities.



Chris Gonaver  
Environmental Services Department Director

CG/mlv

Attachments:

- 1) List of Hold Harmless Communities
- 2) February 7, 2011 Memo to Mayor and Council from Jan Goldsmith
- 3) Map of Hold Harmless Communities throughout San Diego

#	Hold Harmless Agreements	Unit Count	Collection Day	Council District	Characteristic
1	POINTE DEL MAR	98	Monday	1	gated
2	BARCELONA	177	Monday	1	attached units
3	CORAL COVE AT CARMEL DEL MAR	116	Monday	1	attached units
4	COROMANDEL	28	Monday	1	single family
5	DEL CHARRO WOODS	53	Monday	1	attached units
6	DEL MAR HEIGHTS	147	Monday	1	attached units
7	DIEGUENOS (GENESEE HIGHLANDS #6)	91	Monday	1	attached units
8	EAST ROSELAND AREA	6	Monday	1	single family
9	GENESEE VISTA and PLAYMOR LA JOLLA	220	Monday	1	attached units
10	HIDDEN VALLEY	37	Monday	1	single family
11	LA JOLLA SOLEDAD WEST	140	Monday	1	single family
12	LA JOLLA VILLAGE HOMEOWNER	419	Monday	1	attached units
13	LA JOLLA WOODS	76	Monday	1	single family
14	MONTORO - LA JOLLA	28	Monday	1	gated
15	RANCHO CON VISTAS	7	Monday	1	single family
16	SEA POINT	238	Monday	1	attached units
17	THE GROVES AT CARMEL DEL MAR	74	Monday	1	attached units
18	TORREY PINES HEIGHTS (AKA SEA VILLAGE)	180	Monday	1	single family
19	VALENCIA	145	Monday	1	gated
20	WOODLANDS NORTH	129	Monday	1	attached units
21	WOODLANDS SOUTH	133	Monday	1	attached units
22	WOODLANDS WEST	126	Monday	1	attached units
23	WOODLANDS WEST II	117	Monday	1	attached units
24	PENASQUITOS TOWN HOUSES	68	Tuesday	1	attached units
25	PENASQUITOS VILLAS	516	Tuesday	1	single family
26	SHADOW TREE	235	Tuesday	1	attached units
27	3545 LOWELL ST	1	Monday	2	single family
28	3547 LOWELL ST	1	Monday	2	single family
29	LA JOLLA ALTA (COMMON COUNCIL NO. 1) and LA JOLLA ALTA (VENTANA)	289	Monday	2	gated
30	LOMA PORTAL COMMUNITY	219	Monday	2	attached units
31	MOUNT LA JOLLA CONDOMINIUMS	235	Monday	2	attached units
32	MOUNT SOLEDAD CONDOS	10	Monday	2	gated
33	ORLEANS EAST CONDOMINIUM	48	Monday	2	gated
34	SEA COLONY POINT	313	Monday	2	attached units
35	WINDEMERE	305	Monday	2	gated
36	MADISON AVENUE VILLAS	27	Thursday	3	gated
37	COLLWOOD PARK CONDOS	159	Friday	3	attached units
38	KENSINGTON PARK VILLAS	147	Friday	3	gated
39	EASTGATE VILLAGE	57	Wednesday	4	gated
40	6741 BENSON AV	2	Thursday	4	single family
41	6760 AVIATION DR	1	Thursday	4	single family
42	BONITA VISTA AKA BAY TERRACE UNIT #01	211	Thursday	4	single family
43	MASTER, KNOLLS, MEADOWS, GREENS OF HILLSBOROUGH	615	Thursday	4	attached units
44	AUTUMN HILL	79	Friday	4	gated
45	RYAN MANOR	95	Friday	4	attached units
46	SEVEN OAKS	89	Tuesday	5	attached units
47	ALEMEDA CONDOMINIUMS	56	Tuesday	5	attached units
48	BERNARDO VILLA	83	Tuesday	5	attached units
49	BERNARDO VILLAGE GREEN UNIT #1	53	Tuesday	5	single family
50	CANYON POINTE	42	Tuesday	5	attached units
51	CHAPALA	147	Tuesday	5	gated
52	FAIRWAY HEIGHTS NORTH	65	Tuesday	5	gated

#	Hold Harmless Agreements	Unit Count	Collection Day	Council District	Characteristic
53	FAIRWAY HEIGHTS SOUTH	43	Tuesday	5	gated
54	FAIRWAY POINTE	125	Tuesday	5	gated
55	FAIRWAYS VISTAS	56	Tuesday	5	attached units
56	LADERA BERNARDO	54	Tuesday	5	single family
57	LAS BRISAS BERNARDO (BERNARDO HEIGHTS UNIT #12)	231	Tuesday	5	single family
58	LAS FLORES	151	Tuesday	5	single family
59	LOMAS BERNARDO	100	Tuesday	5	attached units
60	LOS RIOS	247	Tuesday	5	gated
61	MASTERS HILL	199	Tuesday	5	gated
62	MESA VILLAGE	541	Tuesday	5	attached units
63	RANCHO BERNARDO VILLAS	63	Tuesday	5	attached units
64	SCRIPPS RANCH ESTATES	213	Tuesday	5	gated
65	SMOKE TREE - SCRIPPS RANCH	49	Tuesday	5	single family
66	THE GROVE	149	Tuesday	5	attached units
67	THE VILLAGE WOODS	114	Tuesday	5	attached units
68	TIMBERLANE	150	Tuesday	5	attached units
69	TIMBERLANE II	139	Tuesday	5	single family
70	WESTWOOD TOWNHOUSES	247	Tuesday	5	attached units
71	WOODCREST HEIGHTS	159	Tuesday	5	single family
72	AMANTEA, HILL AND TIMMINS	97	Wednesday	6	attached units
73	BALBOA TOWERS	116	Wednesday	6	attached units
74	CANYON HAVEN	82	Wednesday	6	attached units
75	CANYON RIM	179	Wednesday	6	attached units
76	FRIARS VILLAGE	442	Wednesday	6	attached units
77	LINDA VISTA VILLAGE	221	Wednesday	6	mobile homes
78	NORTH RIM MISSION VALLEY	316	Wednesday	6	attached units
79	STONEHAVEN	150	Wednesday	6	single family
80	THE BLUFFS OF FOX RUN	200	Wednesday	6	single family
81	UNIVERSITY CANYON EAST	120	Wednesday	6	attached units
82	UNIVERSITY CANYON WEST	176	Wednesday	6	attached units
83	GOLFVIEW ESTATES	82	Friday	7	attached units
84	DEL CERRO HEIGHTS #2 and #4	68	Friday	7	gated
85	MARIPOSA MISSION PACIFIC	209	Friday	7	attached units
86	SMOKE TREE - ADOBE FALLS	113	Friday	7	attached units
87	VILLA COLINA	91	Friday	7	attached units *
88	VILLA MONTEREY CONDOMINIUMS	104	Friday	7	attached units
89	VILLA TIERRASANTA	44	Friday	7	attached units
90	CORONADO TERRACE #2	156	Thursday	8	attached units
91	FLAIR (AKA WHITNEY SUBDIVISION)	49	Thursday	8	single family
92	GREENFIELD MOBILE CLUB	124	Thursday	8	mobile homes
93	HELENA MOBILE HOME PARK	154	Thursday	8	mobile homes
94	IMPERIAL PALMS TERRACE	70	Thursday	8	gated
95	IRIS GARDENS	29	Thursday	8	attached units
96	LAS LOMAS MOBILE HOME PARK	89	Thursday	8	mobile homes
97	OCEAN BLUFFS MOBILE HOME ESTATES	110	Thursday	8	mobile homes
98	PACIFICA HILLS AKA AMERICANA CONDOMINIUMS	181	Thursday	8	attached units
99	PALM TERRACE	128	Thursday	8	attached units
100	THE PARK CONDOMINIUMS	65	Thursday	8	attached units
101	VILLA LA ESPERANZA	32	Thursday	8	attached units
102	VILLAGE BY ROBINHOOD	222	Thursday	8	attached units



**JAN I. GOLDSMITH**  
SAN DIEGO CITY ATTORNEY

**MEMORANDUM**

**DATE:** February 7, 2011  
**TO:** Honorable Mayor and City Council Members  
**FROM:** Jan I. Goldsmith, City Attorney *JIG*  
**SUBJECT:** *Response to Councilmember DeMaio Memo  
City Council Action to Prevent Termination of Trash Services*

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In his February 3, 2011 Memorandum, Councilman DeMaio raised the issue as to whether the Mayor can decide to terminate the "hold harmless" agreements under which certain residents are provided free trash services. Our office issued a public Memorandum of Law on that subject dated October 23, 2009, which can be found on our web site at:  
<http://docs.sandiego.gov/memooflaw/ML-2009-17.pdf>

The discussion as to the reasons the Mayor can terminate the "hold harmless" agreements is on pages 3-5. Please note the following:

1. The agreements state they can be terminated on 7 days notice and there is nothing in the law that prohibits the City from doing so.
2. The City Council never approved these agreements in the first place.
3. By ordinance, the Mayor is empowered to control refuse within the City.

If the City Council wants to extend free trash services, or any public utilities, it may do so through an ordinance and by budgeting the amount of tax funds needed to provide these services subject to our review of legal issues.

As discussed in our July 16, 2010, public Memorandum of Law (page 4), over 40% of residents pay for trash services, roughly 206,000 housing units. In addition, virtually all businesses pay for their trash services. If the City Council wants to extend free trash services to a select group, rather than all residents, our office would need to analyze and advise on legal issues.

JG:cs

Attachment 2

