

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: April 11, 2025
TO: Honorable Mayor and Councilmembers
FROM: City Attorney
SUBJECT: Legal Analysis of the Potential Solid Waste Management Fee

INTRODUCTION

On April 14, 2025, the San Diego City Council (City Council) is expected to consider setting a public hearing date to consider adopting a new Solid Waste Management Fee (Waste Fee). The Office of the City Attorney has prepared this analysis to address questions regarding the proposed Waste Fee, including the process for adoption and implementation, and to assist the City Council as it considers whether to initiate the Proposition 218 process.

In November 2022, a majority of the voters approved Measure B, which amended Chapter 6, Article 6, Division 1, section 66.0127 of the San Diego Municipal Code, known as the “People’s Ordinance,” to remove language that prohibited the City from charging a fee for City-provided trash and recycling collection services, among other amendments. Since Measure B’s passage, San Diego Municipal Code section 66.0127 expressly authorizes the City to charge a cost-recovery fee for these services.

The City hired consultants to conduct a cost-of-service study and develop fee schedule recommendations for a Waste Fee. The City is proposing to begin the process necessary to implement the Waste Fee for residential properties receiving City-provided services.

ANALYSIS

A. What solid waste management services is the City required to provide?

Pursuant to San Diego Municipal Code section 66.0127(d)(1), the City is required to collect and transport solid waste at least once per week for disposal or recycling from properties eligible for City-provided services. Solid waste includes garbage, trash, and organic waste. Solid waste does not include household hazardous waste.

B. What is the legally required process to adopt a Waste Fee?

Article XIIIID, section 6 of the California Constitution, also referred to as Proposition 218, imposes procedural requirements when property-related fees or charges for refuse collection services are imposed or increased.

The procedures are as follows:

- Identify the parcels upon which a fee or charge is proposed for imposition.
- Calculate the amount of the fee proposed to be imposed on each parcel.
- Provide written notice by mail to the record owner of each parcel upon which the proposed fee is to be imposed. The written notice must include information regarding the amount of the fee, the basis of the fee calculation, the reason for the fee, and the date, time, and location of the public hearing to consider adopting the fee. California Government Code section 53750(j) defines record owner as “the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll.”
- Conduct a public hearing on the proposed fee not less than 45 calendar days after the mailing.
- Consider all valid written protests against the fee or charge. Protests must be in writing, and received prior to, or during, the hearing. Protests may be filed by any record owner or any tenant, but pursuant to California Government Code section 53755(b), only one written protest is counted for each parcel, regardless of whether there are multiple owners.
- If valid written protests against the fee are presented by a majority of the affected parcels (50 percent +1), the fee cannot be imposed.
- If written protests are not submitted on behalf of a majority of parcels, the City Council may consider whether to adopt the proposed fees included in the notice.

City Council may adopt fees lower than the noticed rates, but if lower rates are adopted, it must be proportional across service levels because Proposition 218 prohibits the City from using revenues from certain ratepayers to subsidize other ratepayers. For example, while the City Council may adopt lower fees than those provided in the notice, it cannot adopt lower fees for only one service level or “bundle option” (e.g., the 35-gallon trash container) and not another service level or “bundle option” (e.g., the 65-gallon trash container).

C. If a fee is imposed, is it limited to the City's cost of providing the services?

Yes. Pursuant to article XIID, section 6(b) of the California Constitution, a fee imposed for City-provided solid waste management services is limited to cost recovery, meaning it cannot exceed the cost to provide the services. The fee must be used only to provide the services and cannot exceed the proportional cost of providing the service to the property charged for the service.

D. Can the City provide a discounted, or "lifeline" rate, to properties that meet certain criteria?

Yes. The City may subsidize the rate under San Diego Charter section 93 if it is for a public purpose, such as assisting low-income households. However, the subsidy must be paid for by non-rate revenues, such as general fund revenues because Proposition 218 prohibits the City from using revenues from some ratepayers to subsidize other ratepayers.

E. Is the City legally required to replace trash containers and add radio frequency identification (RFID) tags to trash containers?

City haulers must be able to identify City customers and their service levels, which they cannot do with current containers that are not trackable. Procedures that assist City haulers in identifying ratepayers and preventing haulers from inadvertently servicing non-ratepayers, are necessary to ensure fees are only being used for their intended purpose, which is to provide service to customers paying for the service. While it is possible that the City could use a different method to identify eligible customers and their service level, the cost-of-service model for the Waste Fee currently assumes that customers and service levels will be determined by the new trash containers with their RFID tags. If the City were to forego the trash container replacement program, it would need to identify an alternative method for identifying customers and confirming their appropriate service levels.

F. Is the City legally required to provide enhanced services in addition to the services discussed above?

No. The City is only legally required to collect and transport solid waste at least once per week for disposal or recycling from properties eligible for City-provided services. The City is not required to, but may legally, provide additional services, such as bulky item pickup, for the benefit of its customers. Enhanced services can be included in the Waste Fee at initial adoption or may be added in the future.

G. Does the amended People's Ordinance conflict with San Diego Charter section 117(c)?

No. San Diego Charter section 117(c) is the enabling authority for the City to outsource the work of the City's classified work force, also known as "managed competition." San Diego Charter section 117(c) does not require that the City engage in managed competition, nor does it prohibit

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certain limitations on it. The voters approved Measure B, which requires “City forces” to provide trash collection for residences that meet the City’s eligibility criteria. City forces is the term that has been used in the People’s Ordinance continually since 1986. San Diego Municipal Code section 66.0127, as amended by Measure B in 2022, defines “City forces” as City employees. This definition is consistent with the common definition of the term within various City documents, including San Diego Charter section 94, and various provisions of the San Diego Municipal Code related to contract procurement. It is also consistent with the history, intent, and execution of the People’s Ordinance since 1919. Therefore, San Diego Charter section 117(c) and San Diego Municipal Code section 66.0127 can be read in harmony with one another and there is no legal conflict between the two provisions.

CONCLUSION

This memorandum is intended to assist City Council as it considers whether to initiate the Proposition 218 process to impose a Solid Waste Management Fee. This Office is available should you have any questions.

HEATHER FERBERT, CITY ATTORNEY

By /s/ Nicole M. Denow
Nicole M. Denow
Senior Deputy City Attorney

NMD:nsf:amt

MS-2025-3 REV. (Apr. 14, 2025)

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cc: Kirby Brady, Interim Environmental Services Department Director
Jeremy Bauer, Environmental Services Assistant Director
Jeremy Culuko, Interim Environmental Services Assistant Director
Alia Khouri, Deputy Chief Operating Officer