THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: November 13, 2007 REPORT NO: 07-192

ATTENTION: Council President and City Council
Docket of November 20,2007

SUBJECT: Automated Refuse Container Replacement Fee

REFERENCE:

REQUESTED ACTION:

1. Adopt a resolution modifying the existing automated refuse container policy to return responsibility to the individual eligible City resident or small business customer to furnish approved replacement automated refuse containers at their own expense.

2. Adopt a resolution, pursuant to noticed public hearing, revising the Automated Refuse Container Fee schedule to provide for an increase to recover specific current costs of container acquisition, replacement, handling, and container delivery when requested.

3. Authorize the Mayor to establish a cost recovery fee for replacement automated refuse containers to be charged to customers who choose to acquire their replacement containers from the City, and direct the City Clerk to amend the Ratebook of City Fees and Charges to include the automated container program fees described above.

4. Authorize the City Auditor and Comptroller to deposit the Automated Refuse Container Replacement fees, including any corresponding delivery fees, into Fund 10509, the Automated Refuse Container Fund, to be used for the purpose of administering the Automated Refuse Container Replacement Program.

5. Authorizing Auditor and Comptroller to transfer funds, annually or as often as is deemed necessary, from the Automated Refuse Container Fund 10509 to offset costs incurred in the General Fund to purchase, deliver, repair and/or replace automated refuse containers, and administer the Automated Refuse Container Replacement Program.

6. Receive the Automated Refuse Container Replacement Fee Report and attached Cost Analysis and Fee Calculation, Exhibit B; and,

7. Receive the revised Environmental Services Department Regulation, "Automated Container Policy", Exhibit A, which will be promulgated pursuant to the authority established in Sections 66.1024, 66.0126, and 66.0127 of the San Diego Municipal Code.

STAFF RECOMMENDATION:

Modify the existing automated refuse container policy to return responsibility to the individual eligible City resident or small business customer (hereafter referred to as customer) to furnish approved replacement automated refuse containers at their own expense. Authorize the Mayor to establish a fee for replacement automated refuse containers and revise the Automated Refuse Container Fee Schedule to reflect current costs for containers including additional containers. Receive the Automated Refuse Container Replacement Fee Report, the Cost Analysis and Fee Calculation, and the Revised Department Regulation, "Automated Container Policy".

SUMMARY:

This action would revise the Automated Container Policy and Fee Schedule. The policy would be revised to return responsibility to eligible customers of City-provided refuse collection services to furnish replacement automated refuse containers at their own expense. Customers would have the option of purchasing a replacement automated refuse container from the City or acquiring an approved container from a retailer or other legal source. The City would continue to provide one initial automated refuse container to a newly constructed housing unit on a one-time basis at the City's expense. This action also would revise the Automated Container Fee Schedule to reflect the current costs of container acquisition and associated container services, establish a fee for a replacement automated refuse container, and adjust the optional delivery fee to reflect current costs.

This fee adjustment will provide mitigation for anticipated fiscal impacts to the General Fund associated with the proposed Construction and Demolition (C&D) Ordinance and the City-wide Recycling Ordinance (CRO).

Under this fee proposal, customers currently using their first City-provided automated container for refuse collection would continue to use that container as long as it remains serviceable and residents of new housing units would receive one (1) initial automated refuse container on a one-time basis without a fee when collection services are initiated. However, customers would be responsible for furnishing, at their expense, all automated refuse containers after the initial container. Thus, when the initial container is no longer serviceable and out of warranty; lost or stolen, the customer will be responsible for replacing it with another approved automated refuse container. The fee charged for replacement of City-provided refuse containers under warranty would be prorated based on the years the container had been in use as a percentage of its ten year expected useful life.

Residents may obtain approved containers from commercial sources, other legal private sources or through the Environmental Services Department (ESD). The City will not be responsible for warranty claims related to containers obtained from other than the ESD. Consistent with existing policy and the People's Ordinance, use of other than City-approved automated containers would constitute grounds for temporarily suspending City-provided refuse collection services until an approved container is furnished and/or denial of any damage claims associated with that container.

BACKGROUND:

The People's Ordinance of 1919, codified at Section 66.0127 of the San Diego Municipal Code, provides that: *"Residential Refuse shall be collected, transported and disposed of by the City at least once each week and there shall be no City fee imposed or charged for this service by City forces."* Certain small businesses also receive City refuse collection services, pursuant to the People's Ordinance. In order to be eligible for City collection services, residential and small business refuse must be placed at the curb line of a public street on the designated collection day in a *City approved container*. Refuse collection services have historically been funded entirely from the General Fund. When the refuse collection process was automated beginning in 1994, one (1) automated container was supplied to each customer at City expense. An automated refuse container user fee was established at this time to recover the cost of additional containers desired by customers.

From 1919 through 1994 (prior to automated collection) residents and small businesses receiving City collection services were responsible to provide, repair, and replace, at their own expense, their City-approved refuse containers. SDMC section 66.0127, commonly known as the People's Ordinance, does not require the City to furnish approved containers for City refuse collection services. SDMC section 66.0126 expressly requires the person responsible for a residential unit or business location to provide adequate containers to contain the amount of refuse generated during the intervals between scheduled collection days, also clearly indicating that the provision of refuse storage and collection containers is not considered a City obligation under the People's Ordinance. This opinion is more fully discussed in City Attorney Report to Mayor and Council, "Potential Trash Fee, Recycling Fee, Trash Container Fee, and Equipment Fee", dated June 13, 2005.

In 1994, the City began providing uniform automated refuse containers to residents and small businesses, without charge, as part of the implementation of City-wide automated refuse collection. Converting from manual to automated collection has provided substantial cost savings. The purpose of initially providing automated containers to City customers without a fee was to ensure that the containers would be fully compatible with the City's new automated and semi-automated collection vehicles. The cost of providing the initial automated container to residential and small business refuse collection customers was funded through the ESD General Fund operating budget. The City-provided automated containers are assets of the City of San Diego, and ownership is not transferred to the resident or property owner.

DISCUSSION:

ESD currently provides automated refuse collection services to approximately 296,000 residential and 7,600 small business customers. The City currently furnishes one (1) automated refuse container at City expense to each resident or small business customer. Additional automated refuse containers are provided to residents (no limit) and small businesses (limit of 2 containers total) upon request with the payment of a one-time $50 non-refundable user fee per additional container. Currently, approximately 319,000 automated refuse containers are in use, including those at City facilities such as libraries and fire stations.

Automated refuse collection containers are constructed of heavy duty, durable polyethylene material. They are specifically designed for use with the automated collection equipment, which involves a single driver manipulating a hydraulically powered arm to pick up and empty the container. The normal life expectancy of automated containers is 10 or more years, and City obtained containers include a limited 10-year manufacturer's warranty. By contrast, most standard manual collection containers are light to medium duty plastic containers with a much shorter normal life span that would be easily damaged by the hydraulic grippers used by the automated collection vehicles.

A significant portion of the automated refuse container inventory is approaching the end of its expected useful life. These containers will likely need to be replaced over the next few years. Some containers have already been in use beyond the 10-year manufacturer's warranty period. To date, container replacement costs have been borne by the General Fund when the container is no longer covered by warranty. In addition, two to three percent of the automated container inventory requires replacement annually due to theft or damage not covered by the manufacturer's warranty.

Since FY 1994, additional and replacement automated refuse containers have been purchased as a regularly budgeted expense item. However, it has also been necessary to purchase additional containers as an unfunded, over-budget, expense, to meet the needs of new customers and to replace lost, stolen, or damaged containers not covered by warranty. Container funding was eliminated from the FY 2006 budget, but $500,000 was restored to the General Fund budget for refuse container purchases in FY 2007. If the Automated Container Policy is revised to require customers to furnish replacement containers at their own expense and customers who choose to purchase their container from the City are charged a cost recovery fee for the replacement container, it would shift a portion of the container expenses from the General Fund to the individual customers. Funds which would otherwise have been budgeted for containers could be used to mitigate the fiscal impacts of the C&D and CRO Ordinances. Funding for the purchase of containers for new residential units and a portion of the cost for containers still under warranty, damaged by City equipment not covered by the warranty, would be required within the General Fund.

ESD proposes a revision to the Automated Container Policy to require customers to furnish approved replacement automated refuse containers at their own expense, which could be acquired from a commercial source, the manufacturer or from the City. ESD also proposes the establishment of an Automated Refuse Container Replacement Fee to cover the costs of

providing replacement automated refuse containers and associated services. The proposed fee, outlined in more detail in the attached Revised Department Regulation, "Automated Container Policy", and the Cost Analysis and Fee Calculation, is $70 for each refuse container and $25 for delivery when desired. Alternatively, customers could acquire approved replacement automated refuse containers through commercial retail outlets such as home improvement stores, from manufacturers or other legal private sources. ESD also proposes revising the fees for additional automated refuse containers to reflect current costs as shown in the attached Cost Analysis and Fee Calculation.

FISCAL CONSIDERATIONS:

The proposed C&D Ordinance is anticipated to result in both increased costs and reduced revenues for the General Fund from the diversion of C&D material from Miramar Landfill. The former is due to the higher cost of recycling C&D material generated by General Fund departments. The latter is due to the loss of RCBT revenue generated from C&D material currently being disposed of at Miramar Landfill.

The fiscal impact to the General Fund of the C&D Ordinance is estimated to be $300,000 per year, beginning in FY 2009. The Automated Refuse Container Replacement Fee is anticipated to generate approximately $500,000 in FY 2008 with an effective date of January 1, 2008, and approximately $1M per fiscal year, and increasing thereafter, depending on the failure rate of containers and the number of customers who choose to acquire a replacement container from the City.

Implementation of this user fee will offset a portion of the anticipated General Fund cost for replacement containers. In the worse case, if the containers all needed to be replaced in the next year, and there was no fee for replacements, 319,000 automated refuse containers would need to be replaced at a cost of $48.46 apiece plus the Administrative cost associated with these replacements at a cost of $21.72 each plus the cost of delivery at $26.79 per container. This would total nearly $30M for automated container replacement program costs over the next ten years if replaced all at once. Using a conservative approach of replacing only upon failure will result in longer life and reduced cost depending on the actual failure rate of containers.

LEGAL DISCUSSION:

Imposing a fee for replacement automated refuse containers raises two legal issues: (1) is the fee precluded by the People's Ordinance; and (2) would the fee be subject to the requirements of Proposition 218. The People's Ordinance, codified at San Diego Municipal Code section 66.0127, does not require the City to provide the approved containers necessary to be eligible for City refuse collection services. Moreover, the People's Ordinance does not preclude the City from charging customers for the use of approved containers supplied by the City. See previously issued City Attorney Report to Mayor and Council, "Potential Trash Fee, Recycling Fee, Trash Container Fee, and Equipment Fee" dated June 13, 2005, for detailed discussion. As presently structured, the proposed automated refuse container replacement fee probably would not be subject to Proposition 218. (See Exhibit C, City Attorney Memorandum of Law dated October 16, 2007).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

As required for a revision of City fees, public notice will have been placed in *The Daily Transcript* 10 days prior to the City Council meeting at which this item is heard. The community will have this opportunity to make public comment about the changes in fees.

Additionally, ESD will provide information on the fee changes on our web site, in presentations to community groups, in a fact sheet provided to the public, in a press release and in response to inquiries to our customer service call center. A limited number of customers will be affected at the onset of the fee changes so a large public response is not anticipated.

CONCLUSION:

Automated refuse collection containers represent a continuing and increasing cost to the City's General Fund. The use of an automated collection process facilitates safer and more cost-effective collection and contributes to improved neighborhood aesthetics compared to the prior manual collection process. The existing automated refuse collection container inventory is approaching the end of its useful life, and many containers in service are already beyond the warranty period. In addition, population growth continues to place an increasing demand on General Fund resources to fund the acquisition of the initial automated refuse containers needed for new service locations.

Requiring residents to acquire replacement automated refuse containers at their own expense is consistent with the People's Ordinance and other applicable Municipal Code provisions governing refuse collection. Implementation of this user fee is expected to offset anticipated General Fund program expenditures by approximately $10M over the next ten years.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The Key Stakeholders in this proposed action are the residents of the City of San Diego. The revised container policy, new replacement automated refuse container fee, and other container-related fee increases will affect all residents by providing revenue reimbursement to the General Fund equal to the cost of providing replacement automated refuse containers over time and delivering containers. The return to the policy of resident responsibility for obtaining an approved refuse container at their own expense to take advantage of the City's residential refuse collection service at no additional fee will gradually impact these residents over time. However, the cost of the fee for use of an approved container at $70 amounts to just $7 per year, less than $.60 per month.

ALTERNATIVE

1) Continue to allocate General Fund monies to pay for the purchase, maintenance, repair, and replacement of automated refuse containers at an anticipated cost of $29.5M over the next ten years.

Elmer L. Heap, Jr.
Environmental Services Director

R.F. Haas
Chief of Public Works

ELH/CEW

Exhibit A: City of San Diego ESD Department Regulation; Automated Container Policy
Exhibit B: Automated Refuse Container User Fee Calculation Spreadsheet
Exhibit C: City Attorney Memorandum of Law dated October 16, 2007