TO: HONORABLE CITY COUNCIL

ATTENTION: FINANCE COMMITTEE

FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES

DATE: DECEMBER 6, 2005 CMR:441:05

SUBJECT: RESPONSE TO THE AUDIT RECOMMENDATION REGARDING RENT CHARGED BY THE GENERAL FUND TO THE REFUSE FUND ON UNOPENED PORTIONS OF LANDFILL

RECOMMENDATIONS
Staff recommends that the Finance Committee recommend that Council establish the City’s policy on rent charged by the General Fund to the Refuse Fund on closed but unopened portions of the landfill by choosing one of the following alternatives:

1) The Refuse Fund should pay rent on unopened portions of the landfill and staff is directed to update the appraised value of the landfill area, review legal issues, and return with a proposed payment plan.

2) The Refuse Fund should not pay rent on the unopened portions of the landfill.

BACKGROUND
Landfill rent is charged to the Refuse Fund by the General Fund based on an independent annual appraisal which determines the market value rental amount according to the landfill’s highest and best use (Industrial- Research & Development). For 2005-06, appraised rent for the landfill is $4,700,821. This appraised amount has remained unchanged since 2001-02. The actual annual rent paid by the Refuse Fund is $4,288,747. Annual rental payments have remained at this level since 1995-96. The policy to not pay the full-appraised value was instituted by Council in 1995-96 to avoid steep rate increases that would have been necessary to cover the increases in appraised rent (CMR:181:95). Council has extended this policy twice (CMR:266:99 and CMR:238:04). To compensate for the difference between the appraised amount and the payments made, Council approved a smoothing schedule in which the Refuse Fund is required to make payments until 2013-14, beyond the anticipated time of landfill closure in 2010-11 (CMR:238:04).

The Byxbee Park Master Plan outlines the sequence of phases of landfill closure adopted by the City Council. Each phase of the plan consists of closing a certain area of the landfill, developing that area into park space, and eventually opening the area to the public. Phase I (28.86 acres)
was completed in 1990. Phase II is further divided into three sub-phases. Phase IIA (22.47 acres) was closed in 1992, and Phase IIB (23.19 acres) was closed in 2001. Phase IIC consists of the remaining 51.24 acres of active landfill area. According to the Byxbee Park Master Plan, the park development stage for Phase II will not commence until all Phase II landfill areas are closed completely.

Upon closure of each landfill area, rent charges cease. The closure of Phase I was immediately followed by park development and the area was opened to the public shortly thereafter. In contrast, closure for Phases IIA and IIB has occurred, but park development has not started and these areas remain closed to the public.

Upon completion of all landfill disposal operations, estimated in 2011, construction would begin for the final closure of Phase IIC and then be followed by park development for the entire Phase II area. Final closure involves installing collection piping and wells underground in Phase IIC, similar to the piping and wells which have already been installed in Phases IIA and IIB. These phases have already received final closure certification reports from California Integrated Waste Management Board (CIWMB). A layer of low-permeability soil will then be put in place to cap the site and a drainage system will be installed, including a system for groundwater monitoring. Finally, a vegetative layer will be put in place. The estimated completion for final closure is summer 2012. Upon approval of final closure certification from the CIWMB, park development could begin in summer 2013, if General Fund monies become available for park development.

The Byxbee Park Master Plan recommends park development following landfill closure of the entire Phase II area, (Phases IIA, IIB and IIC); park development preliminary costs were estimated at $2,067,700. A funding plan for park development has not been determined. However, final closure costs and post closure maintenance costs are fully funded for 30 years in the Refuse Fund.

In the City Auditor’s review of the Environmental Services Center proposal, the City Auditor recommended that staff should determine whether the Refuse Fund should be responsible for paying rent on these closed, undeveloped areas. This report provides a response to the City Auditor recommendation.

**DISCUSSION**

The Byxbee Park Master Plan does not specify whether the Refuse Fund should be responsible for paying rent on the closed, undeveloped portions of the landfill. Furthermore, current City policy regarding rent paid for General Fund properties used by Enterprise Fund operations does not address this issue (CMR:181:95). Past Council discussion has not focused on this question either. This leaves the determination of this matter as a policy decision for the City Council. Therefore, staff has provided two alternatives for Council’s consideration.

**Alternative 1:** The Refuse Fund should pay rent on unopened portions of the landfill. Staff should be directed to update the appraised value of the landfill area and return with a recommended payment plan.
Even though the closed areas of the landfill are not being used by the Refuse Fund, these areas are still not available for public use as parkland. It could be argued that the Refuse Fund should therefore, pay rent on those areas.

Should Council direct staff to conduct an appraisal of the land, staff would ascertain whether alternative cumulative-rent amounts could be derived. The appraisal process is intended to develop options for establishing a value for the land and the rent amount owed by the Refuse Fund so that refuse rates are not overly burdened as a result of charging rent on the unopened portions of land. Staff will also review legal issues related to the impact of rent costs on Refuse rates.

**Alternative 2:** The Refuse Fund should not pay rent on the unopened portions of the landfill.

This option essentially endorses the status quo. The stoppage of rent on closed areas is based on the premise that the closed, undeveloped portions of the landfill are not utilized by the Refuse Fund. There is no operational or technical reason from the Refuse Fund activity, why the area could not be utilized as parkland immediately. The only constraints to such use are the Byxbee Park Master Plan staging recommendations and the lack of General Fund resources for park development. Hence, the Refuse Fund should not be liable for rent on these areas.

**RESOURCE IMPACT**
The implications for each alternative are presented below.

Alternative 1: The Refuse Fund should pay rent on unopened portions of the landfill. Staff should be directed to update the appraised value of the landfill area and return with a recommended payment plan.

The current Long Range Financial Plan reflects projected net operating deficits for the General Fund in 2013-14, and beyond, due in large part to the decrease of rental payments according to the existing smoothing schedule. These projected net operating deficits could be reduced or eliminated entirely under Alternative 1. This alternative could have an impact on Refuse Fund rates and charges to the ratepayers over the long term.

Alternative 2: The Refuse Fund should not pay rent on the unopened portions of the landfill.

This option provides the General Fund with a steady revenue stream until 2013-14. Compared to Alternative 1, the General Fund would lose this revenue stream much sooner under this scenario. Conversely, the Refuse Fund would be free of its rental commitment much sooner. Resources within the Refuse Fund could then be allocated for other capital or operating needs.

Projected net operating deficits would persist from 2012-13 and beyond due primarily to the elimination of the rental payments. New revenue or expense reductions would be needed at that time to balance the General Fund.

**ENVIRONMENTAL REVIEW**
This matter is not a project for the purposes of the California Environmental Quality Act.
ATTACHMENTS
Attachment 1: Map of Landfill Area
Attachment 2: Correspondence from the Santa Clara County and California Integrated Waste Management Board Regarding Acceptance of Closure Certification
Attachment 3: Byxbee Park Palo Alto Baylands Update- June 1991