TO: HONORABLE CITY COUNCIL
ATTENTION: FINANCE COMMITTEE
FROM: CITY MANAGER
DEPARTMENT: PUBLIC WORKS
DATE: MAY 13, 2008
SUBJECT: RESPONSE TO FINANCE COMMITTEE QUESTIONS RELATED TO THE REFUSE FUND BUDGET FOR FISCAL YEAR 2008-09

This is an informational report and no Council action is required.

BACKGROUND
On March 18, 2008, the Finance Committee recommended that the City Council adopt a resolution to: (a) approve a ten percent refuse rate increase for Fiscal Year 2008-09, which would go into effect July 1, 2008, and would increase annual revenues by $2.5 million; and (b) approve the requisite changes to the Refuse Rate Schedules (CMR:165:08). Also at the meeting, Council Member Burt moved, seconded by Council Member Yeh, that staff bring back with the budget, additional information based on discussion with the City Attorney’s Office on ways in which the refuse rate structure might encourage waste reduction.

DISCUSSION
LEGAL CONSIDERATIONS SURROUNDING REFUSE RATE STRUCTURES
Fees and Charges Subject to Proposition 218
In November 1996, California voters approved Proposition 218, the “Right to Vote on Taxes Act” (“Prop. 218”). Prop. 218 amended the state Constitution, making important changes to local government finance law. Specifically, Prop. 218 defined a set of fees for “property-related services” and set forth rules local governments must follow before enacting or increasing those fees.

Prop. 218 applies to fees that are property-related; in other words, to fees that have a direct relationship to the property associated with the fee [Cal. Const., art. XIIID Sec. 2(h)]. Determining what types of fees qualify as ‘property-related’ can be complicated. While the issue has not yet been litigated, refuse service is essential for most uses of property and thus meets the definition of a property related fee subject to Prop. 218. The City treated refuse fees as subject to Prop. 218 during the 2007 refuse rate increase procedure. Staff recommends continuing to do so in the future.

Prop. 218’s Procedural and Substantive Requirements
Prop. 218’s procedural requirements include mailing notice of the proposed fee increase to all customers and property owners subject to the fee. The notice must include a description of the
mechanism by which property owners may reject the proposed fee increase via a “majority protest” at a public hearing. Most recently, the City mailed notice of a proposed refuse and water rate increase to customers and property owners in April 2008. A public hearing on the refuse rate increases is scheduled for June 9, 2008. If a majority of customers and property-owners submit written protests against the proposed rate increases by the end of the public hearing, the City may not impose the rate increase.

In proposing new or increased refuse rates, the City must also comply with Prop. 218’s substantive rules. For example, revenues derived from the fee may not exceed the funds required to provide the property-related service, and the amount of the fee may not exceed the proportional cost of the service attributable to the parcel.

Using Rates to Encourage Conservation

Devising a new refuse fee structure to encourage waste reduction must be carefully undertaken to ensure that some users are not being charged more than their proportionate share of the service they receive. In general, completion of a detailed cost analysis is one method of determining whether rates are adequately recovering costs. If the cost analysis study shows that the City is under-collecting for some aspects of its refuse service, the City may propose an increase in rates charged for those services. For example, Council could approve additional charges for collecting multiple collection bins, so long as those charges are directly related to the actual costs of collection. This would need to be documented by a study that determines the actual cost of adding a second container to a single service.

Prior to 1992, Palo Alto’s rate structure for refuse collection was such that each garbage can collected was charged the same amount. In 1992, a variable rate structure for garbage collection was instituted whereby each can was incrementally more expensive than the first can. In 1993, a mini-can rate was introduced to provide customers a less expensive option should they decide to reduce their waste consumption.

Curbside recycling programs were already in place for most of the more commonly collected materials (i.e. cans, glass, newspaper, cardboard, and yard trimmings).

Success of the variable can rate system is shown below by the increase in mini-can and one can service since 1992.

<table>
<thead>
<tr>
<th>Oct 1992 (# of cans)</th>
<th>2007-08 Avg Ytd (# of cans)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mini can</td>
<td>0</td>
</tr>
<tr>
<td>1 can</td>
<td>4,982</td>
</tr>
<tr>
<td>2 can</td>
<td>9,180</td>
</tr>
<tr>
<td>3 can</td>
<td>764</td>
</tr>
<tr>
<td>4 can</td>
<td>130</td>
</tr>
<tr>
<td>&gt;4 can</td>
<td>34</td>
</tr>
<tr>
<td># of customers</td>
<td>13,034</td>
</tr>
</tbody>
</table>

With regard to the commercial garbage rate structure, rates have been instituted for the following types of materials to bring awareness of waste reduction:
Bin Collection - In 2001, rates were revised to encourage more efficient collection of garbage and to encourage more recycling. For example, collection one time per week for a larger bin became cheaper than collecting a smaller bin three times per week.

Single source separated-debris box rate—a discounted rate is charged for materials that are source separated by the user.

Construction and Demolition rate—a discounted rate is charged for construction and demolition debris that is not comingled with regular garbage.

Yard trimming debris box rate—a discounted rate is charged for yard trimmings that are separated from regular garbage.

CONCLUSION
Prop. 218 dramatically changed the way local governments may recover their costs of providing services and creating new programs. One of the most important requirements is that revenues generated from property-related fees may not exceed the funds required to provide the property-related service. The most legally advisable way to charge refuse customers more than the cost of providing service in order to encourage conservation is to propose a voter approved special tax. Other methods may include charging additional fees for the collection of multiple bins, if those charges are directly related to the actual costs of collection. A specific study and analysis will need to be done in order to justify an increase in the multiple container rate. As long as the costs are documented by the study, a higher rate may be charged.

In 2009, with the proposed implementation of the zero waste operational plan, the issuance of a new waste hauling agreement and the upgrade of the City’s SAP billing system, staff will be evaluating additional ways to further encourage waste reduction. Staff is currently reviewing other jurisdiction’s rate structures. Challenges related to this are implications of the new hauling agreement on rates and any potential limitations of the new billing system.

ATTACHMENTS
Attachment A: March 18, 2008 Finance Committee Minutes

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