



RECEIVED

AUG 10 2009

THE CITY OF SAN DIEGO  
COUNCIL PRESIDENT BENJAMIN HUESO

August 10, 2009

Honorable Judge So  
Presiding Judge  
San Diego County Superior Court  
Main Courthouse, Third Floor  
220 West Broadway  
San Diego, CA 92101

RECEIVED

AUG 11 2009  
SAN DIEGO  
COUNTY GRAND JURY

**Re: City Council Response to Grand Jury Report  
*Time for Repeal of the People's Ordinance***

Dear Judge So:

Enclosed please find the San Diego City Council's official response to the findings and recommendations in the San Diego County Grand Jury report entitled "Time for Repeal of the People's Ordinance," filed April 7, 2009. Over the course of approximately nine weeks and four separate Council and Committee meetings, the City Council was unable to reach consensus on a single set of responses to the Grand Jury findings and recommendations. As a result, on July 28 the City Council voted unanimously to forward Independent Budget Analyst Report No. 09-43 and memoranda from various Council members as the official response to the Grand Jury report.

Under established procedure, the Office of the Independent Budget Analyst ("IBA") drafts proposed responses to Grand Jury findings and recommendations on behalf of the City Council when the City Council is the responding agency. The City Council may then modify and/or approve the responses with a majority vote. On May 27, the IBA's proposed responses, as set forth in IBA Report No. 09-43, were presented to the City Council Committee on Natural Resources and Culture. The Committee voted 3-1 to forward the proposed responses to the full Council with no recommendation.

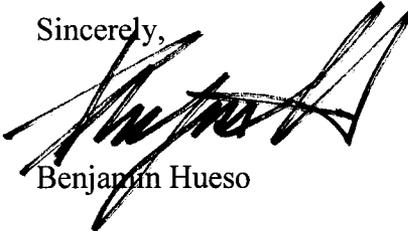
On June 23, the proposed responses were presented to the full City Council. At that meeting, the proposed responses were not approved, and the item was returned to the IBA to revise the responses in an effort to reach consensus. Each Council district was requested to provide a memorandum to the IBA with input on the proposed response to each finding and recommendation. Three memos, encompassing the input of five Council members, were received, each providing widely different perspectives on the Grand Jury findings and recommendations.



Based on the input from the Council memoranda, the IBA revised the proposed responses. These revised responses, reflected in IBA Report No. 09-62, were presented to the Council Committee on Rules, Open Government and Intergovernmental Relations on July 15. After substantial deliberation, the Committee voted 4-1 to forward the item to the full Council with a recommendation to approve the IBA's revised responses, with direction that the IBA and City Attorney work together to further revise the language to a number of the proposed responses based on Committee discussion.

Following Committee direction, the proposed responses were again revised in IBA Report No. 09-66, and presented to the full Council on July 28. A motion to approve the revised responses, as recommended by the Rules Committee, failed by a vote of 4-4. In order to be responsive to the Superior Court, the Council ultimately voted unanimously to forward the IBA's original proposed responses (Report No. 09-43) and the three Council memoranda as the City Council's official response to the Grand Jury findings and recommendations.

Sincerely,



Benjamin Hueso

Cc: Mayor Jerry Sanders  
Honorable Members of the San Diego City Council  
Chief Operating Officer Jay Goldstone  
City Attorney Jan Goldsmith  
Independent Budget Analyst Andrea Tevlin  
City Clerk Elizabeth Maland  
Director of Administration Debra Fischle-Faulk  
San Diego Grand Jury Foreman Victoria D. Stubblefield

Enclosures: Independent Budget Analyst Report No. 09-43; July 8 memo from Councilmembers Gloria and Emerald; July 6 memo from Council President Pro Tem Faulconer and Councilmember DeMaio memo; June 30 memo to Councilmember Lightner

BH:mg

August 10, 2009  
City Council Response  
to Grand Jury Report2



## THE CITY OF SAN DIEGO

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### OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Date Issued: May 21, 2009

IBA Report Number: 09-43

NR&C Committee Agenda Date: May 27, 2009

Item Number: 8

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## Response to Grand Jury Report "Time for Repeal of the People's Ordinance"

On April 7, 2009 the San Diego County Grand Jury issued a report to the City Council entitled "Time for Repeal of the People's Ordinance." The People's Ordinance, approved by San Diego voters in 1919 and amended in 1981 and again in 1986, requires that the City collect, transport and dispose of residential refuse at least once per week, and that no fee shall be charged for such service.

The Grand Jury Report examines the impact of the People's Ordinance in light of current political and economic conditions, and includes three findings and two recommendations. The City Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on each of the findings and recommendations made in the Grand Jury Report by July 7, 2009. The IBA has developed proposed responses on behalf of the City Council for each of the finding and recommendations presented in the Grand Jury Report.

In preparing the proposed responses, the IBA has met with the Environmental Services Department to review factual information regarding the People's Ordinance; the budget for refuse, recycling and greenery collection; and other pertinent information. The proposed responses address the Grand Jury findings and recommendations as directly as possible based on factual information, previous Council or Committee actions, and additional IBA research.

The proposed responses to the Grand Jury findings and recommendations are presented below.

### Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556



## FINDINGS

For each finding in the Grand Jury Report, the City Council shall respond by either agreeing or disagreeing wholly or partially with the finding. For each finding to which the response is disagree wholly or partially, the response shall specify the portion of the finding that is disputed and include an explanation of the reasons for the disagreement.

***Finding 01:*** The [People's] Ordinance is inequitable because it forces some residents to pay for trash services, while it provides trash services to others without an additional fee.

**Proposed Response: Agree.** Under the People's Ordinance, refuse from single family residences is collected by the City with no fee, while refuse from most businesses and multi-family residents must be collected by private refuse haulers, which charge service fees.

***Finding 02:*** The total annual cost to the City for all trash and recycling services provided without a fee to San Diego residents is \$52.7 million per year.

**Proposed Response: Partially Disagree.** The FY 2009 budgeted cost to the City is approximately \$38 million for refuse collection, \$9 million for recyclable commodities, and \$7 million for yard waste collection, for a total of \$54 million.

Refuse collection services are funded by the General Fund, while recycling and yard waste collection is provided by the Recycling Fund. While there are no fees charged by the City for these services, the Recycling Fund is partially funded through AB 939 fees paid by private refuse haulers, which are passed on to commercial and multi-family customers. In FY 2009, AB 939 fees from private refuse haulers were budgeted at \$8 million.

***Finding 3:*** A variable-rate pricing strategy would reduce the amount of waste going to the City's landfill and increase the amount of material being recycled.

**Proposed Response: Agree.** Variable-rate pricing strategies, also known as pay-as-you-throw (PAYT), create a financial incentive to reduce the amount of waste that is produced. As of 2006, over 500 communities in California utilized some form of a PAYT program<sup>1</sup>, including cities such as San Jose, San Francisco, Sacramento and Oakland. Studies by Skumatz Economic Research Associates, a solid waste and energy consulting firm, have estimated that on average PAYT programs result in a 16-17 percent

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<sup>1</sup> Skumatz, Lisa A., PhD. And David J. Freeman, "Pay as you Throw (PAYT) in the US: 2006 Update and Analyses", prepared for US EPA and SERA, by Skumitz Economic Research Associates, Superior CO, December 2006.

reduction in landfilled municipal waste, with 8-11 percent being diverted to recycling and yard waste programs, and another 6% decreased due to source reduction<sup>2</sup>.

## RECOMMENDATIONS

For each recommendation in the Grand Jury Report, the City Council shall respond that the recommendation either has been implemented, has not yet been implemented but will be implemented in the future, requires further analysis, or will not be implemented.

**Recommendation 09-02: Place a measure on the ballot to repeal the [People's] Ordinance**

**Proposed Response: This recommendation requires further analysis.** As part of the FY 2010 Proposed Budget, the IBA recommended that the Mayor and City Council establish a socioeconomically diverse citizen's committee with a focused charge of studying two specific revenue options to augment General Fund resources – a storm water fee and a refuse collection fee – for possible implementation in FY 2011, and make recommendations to Council no later than October 2009. Several Council members have commented that such a committee should also study ways to enhance City revenue streams through economic competitiveness.

In addition, on April 28, 2009 the City Council approved a package of fee increases designed to protect the financial health of the Recycling Fund in FY 2010. As a condition of the approval of these fee increases, the City Council directed the Environmental Services Department to initiate a "Phase II" discussion with various stakeholders in order to identify potential operating efficiencies and a more long-term, sustainable financing system for the City's solid waste management programs. It is the intention that this efficiency and financing study be completed in time to develop revised models and efficiencies in order to enable substantive agreements between the City and the various stakeholders before the City's FY 2011 budget deliberations.

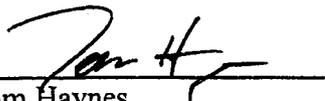
**Recommendation 09-03: Consider adopting a variable-rate fee schedule for trash services provided by the City once the Ordinance is repealed.**

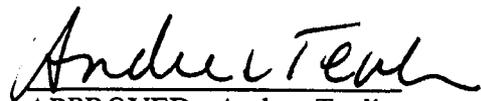
**Proposed Response: This recommendation requires further analysis.** If voters approve a ballot measure to amend or repeal the People's Ordinance, and the City moves to implement a refuse collection fee, a variable-rate fee schedule will likely be considered. However, there are many things to consider prior to establishing such a fee structure, such as the effectiveness of different types of variable-rate structures, the costs

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<sup>2</sup> *Ibid.*

of implementation and administration, ease of implementation, and reliability of revenue streams.

  
Tom Haynes  
Fiscal & Policy Analyst

  
APPROVED: Andrea Tevlin  
Independent Budget Analyst



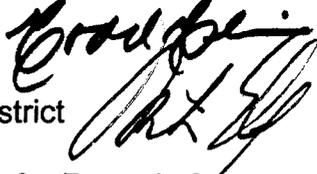
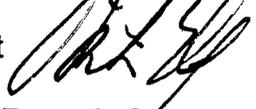
OFFICE OF COUNCILMEMBER TODD GLORIA  
OFFICE OF COUNCILMEMBER MARTI EMERALD

CITY OF SAN DIEGO

MEMORANDUM

**DATE:** July 8, 2009

**TO:** Council President Ben Hueso and City Councilmembers

**FROM:** Councilmember Todd Gloria, Third Council District   
Councilmember Marti Emerald, Seventh Council District 

**SUBJECT:** City Council Response to Grand Jury Report: "Time for Repeal of the People's Ordinance"

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The purpose of this memorandum is to reiterate our full support for the Office of the Independent Budget Analyst's Report # 09-43 (Attachment 1) as outlined below. We ask our colleagues to adopt the following as the City Council's official response to the Grand Jury report entitled, "Time for Repeal of the People's Ordinance."

**FINDINGS**

**Finding 01:** The [People's] Ordinance is inequitable because it forces some residents to pay for trash services, while it provides trash services to others without an additional fee.

**Response: Agree.** Under the People's Ordinance, refuse from single family residences is collected by the City with no fee, while refuse from most businesses and multi-family residents must be collected by private refuse haulers, which charge service fees.

It is clear that the Ordinance does not specifically discriminate between single and multi-family residences, nor does it discriminate against communities with private streets. However, the restrictions codified in the Ordinance include the inability of the City to enter private property to collect refuse and the requirement that refuse be placed at the curb line of public streets at designated times in approved containers. While the Ordinance does not detail the requirement for some residents to pay for trash collection while others receive trash collection for free, the practical implication and physical constraints placed on the City by the Ordinance will result in inequity.

**Finding 02:** The total annual cost to the City for all trash and recycling services provided without a fee to San Diego residents is \$52.7 million per year.

**Response: Partially Disagree.** The FY 2009 budgeted cost to the City is approximately \$38 million for refuse collection, \$9 million for recyclable commodities, and \$7 million for yard waste collection, for a total of \$54 million. Refuse collection services are funded by the General Fund, while recycling and yard waste collection is provided by the Recycling Fund. While there are no fees charged by the City for these services, the Recycling Fund is partially funded through AB 939 fees paid by private refuse haulers, which are passed on to commercial and multi-family customers. In FY 2009, AB 939 fees from private refuse haulers were budgeted at \$8 million.

**Finding 03:** A variable-rate pricing strategy would reduce the amount of waste going to the City's landfill and increase the amount of material being recycled.

**Response: Agree.** Variable-rate pricing strategies, also known as pay-as-you-throw (PAYT), create a financial incentive to reduce the amount of waste that is produced. As of 2006, over 500 communities in California utilized some form of a PAYT program, including cities such as San Jose, San Francisco, Sacramento and Oakland. Studies by Skumatz Economic Research Associates, a solid waste and energy consulting firm, have estimated that on average PAYT programs result in a 16-17 percent reduction in landfilled municipal waste, with 8-11 percent being diverted to recycling and yard waste programs, and another 6 percent decreased due to source reduction.

## **RECOMMENDATIONS**

**Recommendation 09-02: Place a measure on the ballot to repeal the [People's] Ordinance**

**Response: This recommendation requires further analysis.** As part of the FY 2010 Budget, the City Council supported the creation of a socioeconomically diverse citizen's committee with a focused charge of studying two specific revenue options to augment General Fund resources – a storm water fee and a refuse collection fee – for possible implementation in FY 2011, and make recommendations to the Council no later than October 2009. We have also tasked this committee with studying ways to enhance City revenue streams through economic competitiveness. In addition, on April 28, 2009 the City Council approved a package of fee increases designed to protect the financial health of the Recycling Fund in FY 2010. As a condition of the approval of these fee increases, the City Council directed the Environmental Services Department to initiate a "Phase II" discussion with various stakeholders in order to identify potential operating efficiencies and a more long-term, sustainable financing system for the City's solid waste management programs. It is the intention that this efficiency and financing study be completed in time to develop revised models and efficiencies in order to enable substantive agreements between the City and the various stakeholders before the City's FY 2011 budget deliberations.

**Recommendation 09-03: Consider adopting a variable-rate fee schedule for trash services provided by the City once the Ordinance is repealed.**

**Response: This recommendation requires further analysis.** If voters approve a ballot measure to amend or repeal the People's Ordinance, and the City moves to

implement a refuse collection fee, a variable-rate fee schedule will likely be considered. However, there are many things to consider prior to establishing such a fee structure, such as the effectiveness of different types of variable-rate structures, the costs of implementation and administration, ease of implementation, and reliability of revenue streams.

Overall, it is imperative that the City Council respond directly to the issues raised in the Grand Jury report. This response, and a councilmember's support of it, should not be equated with this body's or any individual's potential support for the repeal of the Ordinance. As stated in this response, we strongly advocate for continued productive discussions and analysis to determine how best to proceed in addressing the City's waste management, including its fiscal impact.

Thank you for your consideration of this appropriate response.

TG:pi

cc: Mayor Jerry Sanders  
City Councilmembers  
Andrea Tevlin, Independent Budget Analyst  
Jay Goldstone, Chief Operating Officer  
Chris Gonaver, Director of Environmental Services



City of San Diego

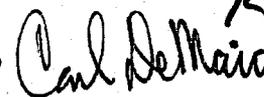
**CARL DEMAIO**  
CITY COUNCILMEMBER – DISTRICT 5

**KEVIN L. FAULCONER**  
CITY COUNCIL PRESIDENT PRO TEM – DISTRICT 2

### MEMORANDUM

DATE: July 6, 2009

TO: Council President Ben Hueso and City Councilmembers

FROM: Council President Pro Tem Kevin L. Faulconer   
Councilmember Carl DeMaio 

RE: Response to Grand Jury Report on Repeal of People's Ordinance

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In response to the Grand Jury report entitled, "Time for Repeal of The People's Ordinance," we request that the following be considered as the official response from the City of San Diego.

#### FINDINGS

##### *Finding 1*

**The [People's] Ordinance is inequitable because it forces some residents to pay for trash services, while it provides trash services to others without an additional fee.**

**City response: Disagree.**

Recommend the adoption of the response proposed by Councilmember Lightner.

##### *Finding 2*

**The total annual cost to the City for all trash and recycling services provided without a fee to San Diego residents is \$52.7 million per year.**

**City response: Disagree.**

First, the Environmental Services Department (ESD) indicated that if new costs for billing, administrative expenses and containers were included, the total fee revenue to the City may be as high as \$65 million.

Second, simply noting the current "cost to the City...without a fee" does not comprehensively address the issue of efficiency. While the notion of "full cost recovery" has been discussed at length throughout the current budget process, the City must first eliminate inefficiencies in its operations.

As part of the rationale for *Finding 2* and *Recommendation 09-02*, the report states that:

*"...voters would be more likely to approve the repeal [of the People's Ordinance] if they had confidence that the City is managing its other financial problems wisely. The City employees' pension board and City officials have recently acted to reign in the pension fund deficit, to negotiate more favorable labor contracts, and to reduce the size of City government." (Emphasis added.)*

Contrary to the above assertions, debts in the pension and post retirement medical program (retiree health) continue to represent serious financial obstacles. Also, the City needs to continue progress on the issue of high labor costs, and voter-approved reforms need to be implemented. Specifically:

- **Significantly Increased Pension Debt:** The last monthly estimate of the unfunded liability of the pension (UAAL) showed nearly a \$470 million increase since June 2008. This means that based on current market conditions, the UAAL for the City's pension fund is estimated at \$1.77 billion, a funded ratio of 70.3%.
- **Retiree Health Care Debt:** A separate valuation of the City's retiree health care program reveals a UAAL of over \$1 billion.
- **Delays in Managed Competition Implementation:** Under Managed Competition, which was approved by voters in 2006, competitive market forces would be harnessed to produce the best bargain for taxpayers. Unfortunately, as the City's Chief Operating Officer recently noted, "the city's labor unions have been steadfast in their efforts to delay managed competition at every turn," and these delays have "come at the expense of a considerable investment of time" on the part of City officials and employees.

These long-term costs represent an ongoing obligation of the City in order to maintain financial stability. If voters eventually agree to overturn the People's Ordinance, the fee that will be charged to residents will need to include the costs to cover these post-retirement benefits. Therefore, a cost-recoverable fee could potentially exceed the rate charged of other residents within the County of San Diego who receive trash pick-up from a private hauler. Efficiency tools such as Managed Competition, which has yet to be implemented, may significantly reduce the costs associated with trash services. Increasing revenues to cover costs associated with trash pickup should not be considered until sufficient progress has been made reducing such costs not only through voter approved initiatives, but any other available management tools.

### *Finding 3*

**A variable rate pricing strategy would reduce the amount of waste going to the City's landfill and increase the amount of material being recycled.**

**City response: Disagree.**

The Grand Jury Report refers to a study conducted by the Reason Foundation entitled "Variable-Rate or 'Pay-As-You-Throw' Waste Management." This study examines anecdotal experiences, benefits and concerns associated with a variety of variable rate pricing strategies. A Pay-As-You-Throw (PAYT) pricing system is not the only method used by cities to reduce waste and increase the amount of material being recycled. In 1989, the state of California passed AB 939, which imposed a mandatory 50% diversion rate on municipalities by the year 2000<sup>1</sup>. The City of San Francisco utilizes many methods beyond the PAYT system to increase its diversion rate, including the use of two bins for recyclables and a bonus-based system for haulers that rewards waste diversion. Furthermore, we have yet to see the effect of the City's recently approved Construction & Debris Deposit Ordinance, which is charged with diverting 50% of construction debris from entering the City's landfills.

Lastly, there are many unintended consequences of implementing a PAYT system that were not discussed within the original report. The Reason Foundation study cited by the Grand Jury lists many additional costs that would undoubtedly be included within the rate structure. These include:

- Customer Service Costs
- Billing System Costs
- Training of Collection Staff
- Costs for New Containers

Although the City has already reached the mandatory 50% diversion rate, the PAYT pricing strategy is one of many options available to increase recycling that has yet to be implemented.

The pros and cons of different pricing strategies, as well as policy objectives would have to be taken into account before implementing any new fee structure. Ironically, the Grand Jury report uses Reason Foundation research as a primary source document for its findings related to variable rate structures, but makes no mention of the organization's steadfast support of Managed Competition for San Diego's trash service. In fact, a readily available June, 2008 article<sup>2</sup> notes that:

*"A 1995 study of 120 local governments in 34 states found that, between 1987 and 1995, the percentage of cities contracting out for solid waste collection increased by 20 percent and that 100 percent of participants saw cost savings from this approach... Given the widespread use and proven success of trash collection competition programs, San Diego is wise to finally utilize this tool to provide better services at less cost to taxpayers."*

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<sup>1</sup> Diversion rate is the percentage of waste materials diverted from traditional disposal such as landfilling or incineration to be recycled, composted, or re-used.

<sup>2</sup> Summers, Adam. "San Diego Can Benefit from Private Trash Collection." Reason Foundation: June 16, 2008. <http://www.reason.org/news/show/1003131.html>

As explained in the response to *Finding 2* above, any discussion of increasing or instituting new fees-for-service must necessarily follow the minimization of costs by the City. This cost minimization must include the implementation of Managed Competition. The City should consider studying available options, such as providing a standard amount of trash service before increasing charges to residents, as well as encouraging recycling through price-based incentives.

## **RECOMMENDATIONS**

**Recommendation 09-02: Place a measure on the ballot to repeal the Ordinance.**

**City Response: Disagree.**

Given the incorrect logic utilized to arrive at Finding 1, a repeal of the People's Ordinance is unnecessary to confront the issues highlighted by the Grand Jury report.

**Recommendation 09-03: Consider adopting a variable-rate fee schedule for trash services provided by the City once the Ordinance is repealed.**

**City Response: Partially Disagree**

Policy options, such as various types of fee schedules, should be considered for achieving waste management goals. However, the consequences (intended and unintended) of all options considered must be thoroughly vetted prior to implementation. Since the variable-rate fee schedule is not the only tool available to the City to increase the diversion rate; a cost-benefit analysis should be conducted of other successful practices from various cities to determine the optimal solution for San Diego taxpayers.

cc: Honorable Mayor Jerry Sanders  
Andrea Tevlin, Independent Budget Analyst



**CITY OF SAN DIEGO  
COUNCILMEMBER SHERRI S. LIGHTNER  
DISTRICT ONE**

**M E M O R A N D U M**

DATE: June 30, 2009

TO: Honorable City Council President Ben Hueso  
Honorable City Councilmembers

FROM: Councilmember Sherri Lightner, District 1

A handwritten signature in black ink, appearing to read "Sherri S. Lightner", written over the "FROM:" line.

SUBJECT: Council Response to Grand Jury Report: "Time for Repeal of the People's Ordinance"

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The San Diego County Grand Jury issued the report, "**Time for Repeal of the People's Ordinance**," dated April 7, 2009. In keeping with California Penal Code section 933(c) the San Diego City Council must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under control of the agency within 90 days after publication of the report. The allowable comments on the findings and recommendations are carefully described in California Penal Code Sections 933.05 (a), (b) and (c).

The San Diego City Council's comments regarding the findings of the Grand Jury Report are the following:

**Finding 01:** The Ordinance is inequitable because it forces some residents to pay for trash services, while it provides trash services to others without an additional fee.

**The San Diego City Council disagrees wholly with Finding 01.** As will be discussed in detail below, the Grand Jury's claim that the Ordinance "forces some residents to pay for trash services, while it provides trash services to others without an additional fee" is not true.

**Finding 02:** The total annual cost to the City for all trash and recycling services provided without a fee to San Diego residents is [sic] \$52.7 million per year.

**The San Diego City Council disagrees wholly with Finding 02.** As discussed in the City of San Diego Independent Budget Analyst Report Number 09-43, the true costs of providing residents with trash services is substantially more than that calculated by the Grand Jury. Additionally, the "facts" used to support this finding of the Grand Jury are

inconsistent, describing the services as a “tax” in some places (i.e., requiring a vote of the people) and as a “fee” in other places (i.e., not requiring a vote of the people). More importantly it is not clear why this finding is germane to the recommendations. The City currently provides numerous services to the residents without a fee or tax. Some of these are far more costly than the estimated cost of refuse collection.

**Finding 03:** A variable-rate pricing strategy would reduce the amount of waste going to the City’s landfill and increase the amount of material being recycled.

**The San Diego City Council disagrees wholly with Finding 03.** There is no information presented to support this finding. In fact, it is premature to even consider or discuss this finding unless the People’s Ordinance is actually repealed.

The San Diego City Council’s comments regarding the recommendations of the Grand Jury Report are the following:

**Recommendation 09-02:** [The San Diego City Council Recommends that the San Diego City Council] Place a measure on the ballot to repeal the [People’s] Ordinance.

**The San Diego City Council disagrees wholly with Recommendation 09-02.** There are no findings to support this recommendation. If the “prospect that the voters would approve the repeal of the Ordinance,” is correct, a ballot initiative can be used to place a measure on the ballot—initiated by the public. In 1981 and again in 1986 the public voted overwhelming against City trash collection fees. The votes were 81% against any fees in 1981 and 83% against in 1986. A ballot measure today may simply be a waste of taxpayer monies.

**Recommendation 09-03:** [The San Diego City Council Recommends that the San Diego City Council] Consider adopting a variable-rate fee schedule for trash services provided by the City once the [People’s] Ordinance is repealed.

**The San Diego City Council disagrees wholly with Recommendation 09-03.** There is no valid reason and no relevant factual information provided by the Grand Jury report to consider any fee or tax proposals until the People’s Ordinance is repealed. There is a reference to a report by the Reason Foundation of Los Angeles and indications that other cities may be adopting this type of “Pay as You Throw” fee-schedule, but there is no data given for cities which have implemented “Pay as You Throw.” How much can we expect this fee-schedule to actually cost San Diego City households today and in the future? There is no estimate of how much such individualized tracking and billing will cost. The City does not have a billing system at present for this service. Will the billing be based on the weight of refuse or the number of containers emptied on collection day per household?

There is no discussion in the Grand Jury Report of the possible unintended consequences of such a fee schedule. In particular, if people place less in the trash container, is that because they are recycling more or are they finding other locations for their trash, such as canyons, streambeds and public rights of way?

There are a number of reasons why Finding 01 of the Grand Jury Report is unfounded. Finding 01 asserts “the Ordinance is inequitable because it forces some residents to pay for trash

services, while it provides trash services to others without an additional fee.” There are six facts which are listed prior to this finding. Reviewing each individually to ascertain whether or not the fact supports Finding 01 we have:

- a. “The People’s Ordinance was passed in 1919, giving the City the responsibility for collecting and disposing of residential trash, and authorized the governing council to levy and collect fees and taxes to pay for the service.” – Interesting and a statement of fact, but this is not a basis for making Finding 01
- b. “The City did not levy and collect fees and taxes to pay for the service; instead it instituted a system of no-fee trash pickup and disposal.” – Interesting and somewhat typical – City ordinances are not always correctly enforced or implemented – but, once again this is not a basis for making Finding 01.
- c. “Today, 304,000 San Diego households receive no-fee trash pickup.” Interesting and possibly a statement of fact, but it is not a basis for making Finding 01.
- d. “San Diego is the only city in San Diego County and the only major city in the State which does not recoup at least a portion of its trash pickup costs by imposing a fee for the service.” To comply with its Ordinance the City of San Diego cannot collect a fee. Once again, although this is a statement of fact, it is not a basis for making Finding 01.
- e. “Citizens who do not receive no-fee trash service must pay a private hauler to collect and dispose of their trash, and must also support the no-fee service received by others through their contributions to the City’s General Fund.” This fact is possibly related to Finding 01, but it is not clear that this is a result of discrimination. The assertion that an inequitable trash situation exists may be true but it is not the result the ordinance or the vote of the people – it is a matter of choice for some residents and property owners and/or a failure of the City to properly implement the San Diego Municipal Code. These important issues were not considered by the Grand Jury Report.

The People’s Ordinance is quite clear – it does not discriminate between single family and multi-family residences, and it does not discriminate against communities with private streets. The People’s Ordinance is given in Section 66.0127 (Attachment 1) of the San Diego Municipal Code (SDMC). It is not clear if the Grand Jury reviewed the Ordinance or the language of the 1981 (Attachment 2) or 1986 (Attachment 3) ballot initiatives, which were passed overwhelmingly by the voters—by margins of 5 to 1. These very relevant documents are not listed in the summary of materials considered by the Grand Jury. The Grand Jury’s review of documents should have included the SDMC in addition to the enabling legislation for the original People’s Ordinance and its subsequent modification.

The Grand Jury Report claims that the present system of trash collection is inequitable, and therefore the Report advocates for the replacement of the existing system of trash collection with another *unspecified* system that could be just as “inequitable”. Will single-family residents really be treated the same as multi-family residents under a new system? Or, will they now simply be paying a new fee for City provided trash haulers while multi-family residents will be forced to continue to use commercial trash haulers? Or, will the City become the only provider of trash collection services for *all* City residents under the Grand Jury’s envisioned “more equitable” plan?

**The findings and recommendations of the Grand Jury Report entitled "Time for Repeal of the People's Ordinance," dated April 7, 2009 are not supported and are not based on facts presented in the Report. The San Diego City Council should wholly disagree with the findings and recommendations for the reasons given above including the apparent failure of the Grand Jury to properly consider the language of the Ordinance or its implementation.**

SL:jr

cc: Independent Budget Analysis

(6-2009)

- (h) Brush, landscape, trimmings, crushed cardboard boxes, and similar materials shall be tied securely in bundles weighing not more than fifty (50) pounds and shall be not more than four (4) feet long.
- (i) Reusable containers supplied by a licensee which are used for mechanized collection, including stationary compactors, and used for putrescibles or similar waste matter shall be equipped with close-fitting lids and be leakproof and rodentproof. Containers which are used expressly for dry wastes (construction, demolition, industrial, etc.) may be kept uncovered except as required under applicable provisions of the California Vehicle Code and this Code while being transported upon any street or highway. Containers shall be sanitary and in good repair and shall be clearly identified with the name and telephone number of the licensee.
- (j) Containers which fail to comply with the requirements of this Section, or which have deteriorated to the point where they are no longer in compliance, will be marked by the City of San Diego and will not be collected.
- (k) Recyclable waste material placed out for collection at designated locations shall be in containers designated by the City Manager for such purpose.  
*(Amended 11-10-1998 by O-18601 N.S.)*

**§66.0127 Refuse Collection**

- (a) As used in this People's Ordinance:
  - (1) "Refuse" means waste material of any nature or description generated within the City limits, excluding hazardous or toxic chemicals, wastes, materials or substances as defined now or hereafter by federal or state law or regulation;
  - (2) "Residential Refuse" means refuse, as defined herein, normally generated from a Residential Facility and which is placed at the curb line of public streets at designated times in approved containers;
  - (3) "Nonresidential Refuse" means all refuse that is not Residential Refuse, as defined herein;
  - (4) "Residential Facility" means a single family or multi-family residential structure used and occupied for Nontransient Occupancy;
  - (5) "Nontransient Occupancy" means occupancy through ownership, lease or rental for periods of one month or more.
  - (6) "Small business enterprise" means a commercial establishment providing sales and services to the public and licensed or taxed by the City.

(6-2009)

- (b) No person shall collect, transport or dispose of any refuse except as provided herein.
- (c) The City Council shall by ordinance regulate and control the collection, transportation and disposal of all refuse provided that:
  - (1) 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;
  - (2) The City shall not collect Nonresidential Refuse, except that Nonresidential Refuse from a small business enterprise may be collected by City Forces if authorized by the City Council and limited to once a week service in an amount no greater than one hundred fifty percent (150%) of the refuse generated by an average City residential dwelling unit. There shall be no City fee imposed or charged for this service by City Forces;
  - (3) The City shall not enter upon any private property to collect any refuse except in the case of public emergency or pursuant to a hold harmless agreement in effect as of the date of adoption of this ordinance;
  - (4) Fees established by ordinance of the City Council for disposal of Nonresidential Refuse shall not exceed the full ascertainable cost to the City for such disposal.
- (d) Pursuant to the ordinance duly adopted by the City Council, the City Manager may then duly promulgate such rules and regulations as are appropriate to provide for the collection, transportation and disposal of refuse.  
(*"Refuse Collection" renumbered from Sec. 66.0123 on 10-21-1996 by O-18353 N.S.*)

### §66.0128 Refuse Disposal Facilities—Regulations

Rules and regulations for the use of refuse disposal facilities operated or maintained by The City of San Diego are set forth in section 66.0124. Any person violating any of these rules and regulations is guilty of a misdemeanor and may be subject to any penalties set forth in chapter I of this municipal code:

- (a) Waste shall not be deposited which presents a safety hazard in the disposal operation. Waste which because of its physical characteristics may present difficulty in the disposal operation shall be deposited only in the manner approved by refuse disposal site personnel.

E-DATE	PROP	TEXT	#/% YES	#/% NO	Charter Amend?	Init/ Ref?	2/3 Vote?
11/3/81	F (pass)	AMENDS PEOPLE'S ORDINANCE NO. 7691. Shall People's Ordinance No. 7691 relating to City refuse as adopted in 1919 be amended to authorize the City Council to adopt rules and regulations to specifically provide that: no fees shall be charged for the collection, transportation or disposal of residential waste generated within the City of San Diego; cost recovery fees may be charged for the disposal of commercial wastes and industrial wastes generated in the City; City collection of waste from any single commercial or industrial enterprise shall not exceed one hundred fifty percent (150%) of the waste generated by an average City residential dwelling unit; the City Manager is authorized to designate the waste service areas within the City and direct waste collected in those areas to designated waste disposal facilities?	107,200 81.29%	24,667 18.71%	N	N	N
11/3/81	G (fail)	RATIFICATION OF ORDINANCE NO. O-15557 (New Series). Shall Ordinance No. O-15557 (New Series) entitled, "AN ORDINANCE AUTHORIZING THE REMOVAL FROM CEMETERY DEDICATION OF APPROXIMATELY SIXTEEN (16) ACRES OF THAT PART OF MOUNT HOPE CEMETERY WHICH IS UNDEVELOPED AND IS NOT NEEDED FOR CEMETERY PURPOSES AND IS SOUTH OF MARKET STREET, SO THAT SAID PROPERTY MAY BE UTILIZED THROUGH LEASE OR SALE FOR PURPOSES WHICH ARE CONSISTENT WITH THE COMMUNITY PLAN FOR SAID AREA," adopted by the Council of The City of San Diego be ratified?	56,816 48.82%	75,866 57.18%	N	N	Y

ATTACHMENT 2

108 1

E-DATE	PROP	TEXT	#/% YES	#/% NO	Charter Amend?	Init/ Ref?	2/3 Vote?
11/4/86	C (pass)	<p>AMENDS PEOPLE'S ORDINANCE NO. 7691. Shall People's Ordinance No.7691 relating to City Refuse as adopted in 1919 be amended to:</p> <p>Define "refuse", "residential refuse", "nonresidential refuse", "residential facility", "nontransient occupancy" and "small business enterprise";</p> <p>Authorize the City Council to regulate by ordinance the collection, transportation and disposal of refuse so that residential refuse shall be collected, transported and disposed of by the City at least once each week with no City fee imposed for same by City Forces;</p> <p>Provide that the City shall not collect nonresidential refuse except that, if authorized by the City Council, nonresidential refuse from a small business enterprise may be collected, limited to once a week service in an amount no greater than one hundred fifty percent (150%) of the refuse generated by an average City residential dwelling unit and there shall be no City fee imposed for the same by City Forces; nor enter upon private property to collect refuse absent a case of public emergency or pursuant to an agreement in effect as of this ordinance;</p> <p>Provide that fees established by ordinance of the City Council for disposal of nonresidential refuse shall not exceed the full ascertainable cost to the City for such disposal; and</p> <p>Provide that pursuant to ordinance the City Manager may promulgate rules and regulations to provide for the collection, transportation and disposal of refuse?</p>	185,160 82.67%	38,825 17.33%	N	N	N

ATTACHMENT 3

1 of 1