

TIME FOR REPEAL OF THE PEOPLE'S ORDINANCE

SUMMARY

The People's Ordinance (Ordinance) was enacted by a vote of the people in 1919. The 2008/2009 San Diego County Grand Jury (Grand Jury) concludes that the Ordinance has outlived its usefulness in a 21st Century society. It is a costly program that the City of San Diego (City) can no longer afford.

The City's cost for general trash pickup and disposal is approximately \$37 million per year. Additional related costs to the City include \$6.9 million per year in recycling fees paid at the Miramar Landfill,¹ and \$8.8 million for curbside pickup of recyclables and green waste. Thus the total annual cost to the City for all trash and recycling services provided without charge to San Diego residents is \$52.7 million per year. According to the Independent Budget Analyst (IBA), even this total likely understates the true cost because it does not account for legal, financial and other city-wide administrative support expenses.

The Ordinance is inequitable because it provides no-fee trash collection and disposal to some citizens and requires other citizens to pay for the service.

The repeal of the Ordinance would allow the City to impose fees for trash services in a manner that would provide economic incentives for citizens to recycle and reduce the amount of waste they send to the City's landfill.

For these reasons, the Grand Jury recommends that the City Council place a measure on the ballot to repeal the Ordinance, and consider imposing a variable-rate trash service fee once the Ordinance is repealed.

PURPOSE AND BACKGROUND

The Grand Jury examined the impact of the Ordinance in light of the political and economic conditions that exist in the City today. The Ordinance provides no-fee trash service to some citizens while others pay for the service. The Grand Jury's goal was to determine whether the Ordinance has outlived its original intent and usefulness, and if the time has come to seriously consider repealing it. This issue was also the subject of studies conducted by the 2004/2005 Grand Jury and the 2007/2008 Grand Jury.

¹ The recycling fees are required by AB 939, the Integrated Waste Management Act, which was passed in 1989 because of the increase in the amount of waste being generated and the decrease in landfill capacity in the State. The bill mandated the reduction of waste being disposed (twenty-five percent by 1995, fifty percent by 2000) and required the collection of fees to support recycling programs. In San Diego, this recycling fee is \$7/ton of all waste being disposed at the Miramar Landfill.

The no-fee trash service provided under the Ordinance requires a minimum of \$37 million per year from the City's General Fund. Recycling fees and green waste pickup and disposal drive the total costs to the City to more than \$52 million per year. This is a huge burden on the City as it struggles in difficult economic times to maintain financial solvency. The Ordinance also has an impact on achieving other societal goals such as reducing the amount of trash generated for disposal and increasing the amount of material that is recycled for beneficial use and environmental protection.

PROCEDURES

The Grand Jury reviewed the following historical and current documents relating to the Ordinance:

- Original People's Ordinance enacted in 1919;
- Amendments to the People's Ordinance enacted in 1981 and 1986;
- News reports discussing the People's Ordinance;
- Relevant sections of Proposition 218, Proposition 13, and AB 939;
- Reason Foundation Policy Study No. 295;
- Relevant sections of the reports from the 2004/2005 and 2007/2008 Grand Juries; and
- Independent Budget Analyst's Report Number 09-2 dated January 15, 2009.

The Grand Jury also conducted several interviews relating to the Ordinance with:

- A representative of the Environmental Services Department;
- Representatives of the San Diego City Council;
- A representative of the Mayor's Office.

DISCUSSION

The Ordinance [Ordinance 7691, Municipal Code section 66.0123] was enacted in 1919 by a vote of the people when the City had a population of approximately 70,000. The Ordinance was prompted by the revelation that a private company then being paid by the individual residents for collecting their trash and food waste had developed a profitable business selling the food waste to hog farmers in Los Angeles. The Ordinance gave the City itself the responsibility for waste collection. It also assigned the duty of levying and collecting taxes and fees to pay for the service to the "Common Council," the equivalent to today's City Council. However, that portion of the Ordinance was never implemented, establishing a precedent for no-fee trash collection.

Although the City stopped selling garbage to hog farmers forty-seven years ago, the Ordinance is still in effect. It was not until the voters amended the Ordinance in 1981 and 1986 that language specifically prohibiting the City from imposing a fee or charge for trash service was inserted. These amendments also exempt small businesses from paying for trash service, subject to certain restrictions.

Since enactment of the Ordinance, the size of the population has changed, and housing patterns have also changed. Today, the population is 1.3 million, and multi-family residences make up a much higher proportion of the housing mix than they did in 1919. The nature of solid waste disposal has also changed in the intervening years. Until the

end of World War II, an estimated seventy-five percent of household waste was extracted for reuse. Today that percentage has fallen to below ten percent.

The practical implication of the Ordinance is that today approximately 304,000 San Diego households (sixty percent) receive no-fee trash pickup and disposal. These are primarily single family residences. With minor exceptions, those who pay a separate fee for trash disposal services are occupants of multi-family residences, businesses and commercial enterprises. As has been noted in prior Grand Jury reports, a majority of San Diegans receive a service without charge for which residents of every other city in San Diego County and residents of every other major city in the state must pay a separate fee in addition to the other taxes and fees they pay for City services.

There are three primary reasons the Grand Jury recommends repeal of the Ordinance:

- Providing some residents no-fee trash services while forcing others to pay an additional fee is inequitable;
- It does not provide incentives for citizens to recycle and reduce the amount of trash generated; and
- Its repeal would free up funds currently needed for the City's cash-starved General Fund.

The argument has been made in the past and will no doubt be made in the future that what is commonly called "free" trash service is not free, but is paid for through the property or sales taxes paid by those who receive it. To a certain extent that is true, since the small portion of property taxes and sales taxes returned to the City by the State does go into the General Fund, some of which is used to pay for City-provided trash services.² These taxes are paid by both those who receive no-fee City trash service and those who do not. The net result is that while all residents pay into the General Fund, some residents must pay an additional fee to a private hauler to pick up and dispose of their trash.

The City's recycling program has moved from voluntary to mandatory under the City Recycling Ordinance which took effect January 1, 2008. Full implementation of the recycling program in all areas and sectors of the community will be accomplished by January 1, 2010. By that date, all 304,000 locations receiving the no-fee waste service provided by the City will be included in the mandatory programs. Private haulers pick up both trash and recyclables from all other classes of waste generators (multi-family residences, business, and commercial customers) who are also required to recycle.

² Per the Independent Budget Analyst Report No. 09-2, General Fund revenues are made up primarily from property taxes, sales taxes, transient occupancy taxes, and franchise fees. These sources represent approximately sixty-eight percent of the General Fund revenue. The State returns seventeen percent of property taxes collected and three-quarters of one cent of the base sales tax of 7.5% to the City for use in city operations. The balance comes from miscellaneous sources including property transfer taxes, safety sales taxes, vehicle license fees, as well as other broad revenue categories such as licenses and permits; fines, forfeitures and penalties; revenue from money and property; revenue from other agencies; charges for current services; and transfers from other funds.

The mandatory residential recycling program is a step in the right direction, but lacks the economic incentives needed to achieve full compliance. City residents enjoying no-fee trash collection and recycling services never see a bill. The cost of providing these services is not a separate special tax itemized on property tax bills. The result is that citizens receiving no-fee trash services generally have no idea how much it costs. This fact, and the fact that there is no limit on the amount of general waste that will be picked up under the City's no-fee waste service to single family residences, removes an important incentive for residents to recycle everything they can and reduce the amount of general waste put out on the curb. According to Environmental Services Department representatives, residents continue to place some blue-container items that could be recycled (paper, aluminum, glass, and cardboard) and green waste that could be converted into compost and mulch in with the general waste in the black containers. This compromises the effectiveness of the mandatory recycling program and results in additional waste going to the landfill.

If the Ordinance were repealed, the City would have the ability to provide economic incentives for waste reduction and increased recycling by charging trash pickup and disposal fees according to the amount of waste generated in each household. According to the Reason Foundation of Los Angeles, this variable-rate pricing, also known as "Pay As You Throw," is being adopted in thousands of communities nationwide, including more than 200 in California, to create incentives for additional recycling and waste reduction in the residential sector. Variable-rate programs encourage recycling, composting, and waste reduction, and are the single most effective method for reducing residential waste going to landfills, according to the Reason Foundation.

The Ordinance can be repealed by a simple majority of the voters. After repeal of the People's Ordinance, enactment of an ordinance to charge for trash pickup and disposal could be accomplished after mailing notice to the affected property owners and not receiving written protests from a majority of those property owners. No election would be required under the provisions of Proposition 218.³ The IBA estimates that under the current system of unlimited trash pickup, the fee would be approximately \$10.60 per month per household.

Repeal of the Ordinance would have a very beneficial impact on the City's finances and significantly contribute to reducing current and projected future budget deficits. In interviews regarding the possibility and/or prospects for the repeal of the Ordinance anytime in the near future, a common theme emerged: voters would be more likely to approve the repeal 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

³ Proposition 218, passed by the State's voters in November 1996, targets the imposition of taxes, assessments, and property related fees. Different voter or property owner election or protest procedures are specified depending on the type of revenue raising device. However, Proposition 218 specifically provides that certain property-related fees such as those imposed for water, sewer and refuse collection may be imposed by following a protest procedure and without an election.

to reduce the size of City government. These actions could enhance the prospect that voters would approve the repeal of the Ordinance.

FACTS AND FINDINGS

Fact: The People's Ordinance was passed in 1919, giving the City 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.

Fact: 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.

Fact: The People's Ordinance was amended in 1981 and 1986 to specify that citizens living in single family residences are entitled to no-fee trash pickup, and small businesses are also entitled to no-fee trash pickup, subject to certain restrictions.

Fact: Today, 304,000 San Diego households receive no-fee trash pickup.

Fact: 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.

Fact: 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.

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.

Fact: No-fee curbside pickup and disposal of residential trash costs the City \$37 million per year.

Fact: No-fee curbside pickup of recyclables and green waste costs the City \$8.8 million per year.

Fact: Recycling landfill fees imposed under AB 939 cost the City \$6.9 million per year.

Fact: Residents receiving no-fee trash service never see a bill and are generally unaware of the true cost of this service.

Fact: Trash services are not listed as a special tax on property tax bills.

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.

Fact: There is no limit on the amount of waste the City will pick up without charge from an individual household.

Fact: The mandatory recycling ordinance does not include economic incentives to achieve full compliance.

Fact: Variable-rate pricing programs provide incentives for residents to recycle, compost and reduce the amount of waste generated.

Fact: Variable-rate pricing is the single most effective method for reducing residential waste going to the landfill.

Fact: Variable-rate pricing programs have been and are being adopted in thousands of communities nationwide.

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.

RECOMMENDATIONS

The 2008/2009 San Diego County Grand Jury recommends that the San Diego City Council:

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

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

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
City Council, City of San Diego	09-02, 09-03	07/06/09