



MEMORANDUM

TO: City Council

FROM: Nicole Valentine, Administrative Services Director

SUBJECT: Public Hearing to Consider Adoption of a Resolution Establishing Solid Waste Rates

DATE: June 14, 2022

SUMMARY OF ACTION:

Conduct a public hearing, consider protests regarding the proposed solid waste rate adjustment set forth in the notice of public hearing provided to solid waste rate customers based on the Solid Waste Rate Review, and if there is no majority protest, adopt a Resolution establishing solid waste rates for June 15, 2022, January 1, 2023, and January 1, 2024.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no impact on staff resources related to the proposed action. There will be a minor increase in franchise fee revenue from the increase and a minor increase to the City's cost for solid waste collection. If the proposed multi-year rate setting approach is approved, future personnel resources will not be required to prepare interim year reviews, thus providing an operational efficiency. Pursuant to the City's existing Franchise Agreement with South County Sanitary Service (SCSS), the costs of consultant services to review SCSS's rate adjustment request are paid by SCSS.

RECOMMENDATION:

1) Conduct a public hearing and consider protests regarding the proposed solid waste rate adjustments identified in the notice of public hearing, based on the Solid Waste Rate Review; and 2) If there is no majority protest, adopt a Resolution establishing new Solid Waste rates effective June 15, 2022, January 1, 2023, and January 1, 2024.

BACKGROUND:

The City has had a Franchise Agreement with SCSS, a subsidiary of Waste Connections, for collection, diversion and disposal of solid waste in the City since 1997. On June 10, 2008, a new Solid Waste Collection Franchise Agreement with SCSS was approved and the Franchise Agreement was subsequently amended twice in 2016. The Franchise Agreement was amended a third time in April 2022 to address necessary changes and requirements associated with Senate Bill (SB) 1383. Through the terms of the Franchise

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Agreement, SCSS is entitled to compensation for its “labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, transfer and transport, processing, division, disposal, provide and all other things necessary to perform all of the services required by [the] Agreement.” This compensation is received through the rates and charges paid by the City’s customers, which are presented to the City through rate review applications and reviewed by the City Council through the Proposition 218 process.

Per the Franchise Agreement, rates are reviewed in accordance with the “City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates” (Manual). The Franchise Agreement allows for a base rate adjustment every three years and interim rate increases in the other two years. In interim rate periods, the operator is limited to increases resulting from inflation, tipping fee adjustments, and franchise or regulatory fee increases. During base rate years, the operator is able to request adjustments due to changes in other operational costs as set forth in the Manual.

The following table summarizes the SCSS rate review history beginning in 2005 (based on the year of the application (which is typically the implementation year):

Rate Increase History: 2005 to 2022

Year	Review Type	Increase %
2005	Base Year	5.60%
2006	Interim Year	3.09%
2007	Interim Year	3.76%
2008	Base Year	3.00%
2009	Interim Year	0.00%
2010	Interim Year (1)	0.00%
2011	Interim Year	0.00%
2012	Interim Year (1)	5.15%
2013	Base Year	3.20%
2014	Interim Year	2.05%
2015	Interim Year	0.00%
2016	Base Year	3.25%
2017	Interim Year	1.10%
2018	Interim Year	1.60%
2019	Base Year	10.06%
2020	Interim Year	1.70%
2021	Interim Year	0.70%
2022	Base Year	22.19%

(1) SCSS did not request a rate increase in 2010 (which would have been a "normal" cycle to do so), and accordingly, did not submit a Base Year rate application. However, SCSS did submit a rate request in 2011 using an Interim Year methodology. The reasonableness of using the resulting "hybrid" approach was discussed in detail in the 2011 Interim Year report, which concluded that this approach was reasonable given the circumstances.

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The City received an initial rate adjustment request from SCSS on October 20, 2021, and a revised draft application on February 18, 2022, that included a base year rate increase request of 24.65%. Along with the Cities of Grover Beach and Pismo Beach, and the Oceano Community Services District, the City jointly contracted with consultant William C. Statler to prepare a review of the rate increase request to determine if it complies with the provisions of the Manual. The Manual ensures that the hauler's rates are justifiable and supportable, and reflect the cost of providing the service; it also ensures that there is ongoing review and rate stability, and that the rate setting process is easy to administer and implement. With the assistance of Mr. Statler, the City completes a formal and thorough review of the financial and operating data to protect the City's ratepayers. The process is designed to prevent large, unexpected fluctuations in rates anticipated from funding a broadening scope of integrated waste management services.

After careful review of the rate adjustment requests from SCSS and relevant supporting documentation, Mr. Statler completed a comprehensive report (Report) evaluating the request and suggesting that a 22.19% increase is justifiable in 2022. The key drivers behind the proposed 22.19% rate increase for 2022 can be summarized as follows:

- 8.05% for truck depreciation
- 7.71% for investments in food and green waste recycling
- 2.41% for insurance
- 1.06% for increase in gas and oil
- 2.96% for all other cost increase including labor, ongoing maintenance, and other pass-through costs

In addition, SCSS proposes to include the next two interim rate adjustments in its request at this time. These rates are proposed to increase each of the next two years to address the following factors:

1. Changes in the Consumer Price Index (CPI) for "controllable" operating costs. The Manual states that the annual change in CPI will be based on the published Bureau of Labor Statistics in their Monthly review.
2. Changes in "pass-through costs" (primarily landfill tipping fees, which are set by the County Board of Supervisors and are not controlled by SCSS).

On April 12, 2022, the City Council reviewed the Solid Waste Rate Review report completed by Mr. Statler (Attachment 2) and received a presentation from Mr. Statler. The staff report from the April 12, 2022 meeting is provided as Attachment 3.

As explained during the April 12, 2022 presentation, Mr. Statler's report includes a discussion of Delayed Rate Implementation increases on page 3, which describes a proposal to allow SCSS to recoup increased costs that have been incurred during delays in the consideration of the rate review application. The City has not previously approved delayed implementation rates. However, the Manual does provide for this possibility if

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there is a delay in implementation of a rate increase of more than 120 days after application if it is “no fault of the franchise hauler.” Given the initial October 20, 2021 submittal date, this would indicate rate approval may have been necessary by March 1. Two of the factors that mitigate this 120-day period are identified in Mr. Statler’s report as follows:

1. When the 120-day period was set, the understanding at the time was that the Proposition 218 45-day notice and protest requirements did not apply to approval of private company solid waste rates.
2. Review was delayed pending consideration of rate increases by the San Luis Obispo Integrated Waste Management Authority (IWMA) and their possible impact on SCSS’s rates. These new rates were not adopted by the IWMA until March 9, 2022, and will be implemented starting July 1, 2022. SCSS is authorized to bill this fee to the rate payers benefiting from these additional services in compliance with Proposition 218.

In accounting for these factors, Mr. Statler and staff recommend that delayed rate implementation apply for the period between May 1, 2022, and the City Council’s approval of the rate adjustments, anticipated to be considered on June 14, 2022, as discussed further below. While delays in completion of the analysis of the rate review application were “no fault” of SCSS, they were not the fault of the City either. SCSS argued that the delayed rate implementation start period should begin March 1, 2022, 132 days after the original rate review application submittal date of October 20, 2021.

The proposed temporary Delayed Rate Implementation increase is shown in the table below:

Effective Date	New Rate %	March 1 Delay Rate Implementation	May 1 Delay Rate Implementation	Mr. Statler & Staff Recommendation	SCSS Recommendation
15-Jun	22.19%	11.95%	5.12%	27.31%	34.14%

Please note that the Delayed Rate Implementation increase ends December 31, 2022. Beginning January 1, 2023, rates will lower to an increase of 22.19%, plus any changes related to CPI for “controllable” operating costs and changes in “pass-through costs.”

The April 12, 2022 staff report also described language in Section 8.3 of the Franchise Agreement that provides that if the rate increase request compared with the rate in effect at the date of the Franchise Agreement exceeds the cumulative cost of living increase from that same date, the City has the option of terminating the Franchise Agreement at any time within nine months following approval of the requested rate increase. The “trigger” calculation does not limit the amount of increase that SCSS can request; it simply incentivizes SCSS to keep its requested increases below the cumulative increase in CPI to avoid the City opting to terminate the Franchise Agreement. SCSS’s request exceeded the “trigger” by 26.89%. However, staff recommended against pursuing the termination (“trigger”) option as, based on a detailed review of costs as presented in Attachment 2,

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the costs are reasonable and rates have been calculated in accordance with the Manual. Finally, the requirements of Senate Bill 1383 have created significant new regulatory requirements, burdens, and costs for the City, its solid waste partners such as the IWMA, and SCSS. Franchise Agreement amendments approved in April will require SCSS to help the City meet certain SB 1383 requirements, and termination of the Franchise Agreement with SCSS at this time would create significant disruption in the efforts to comply with the new State regulations.

On April 12, 2022, the City Council set the Public Hearing for June 14, 2022, to consider adjusting the Solid Waste rates for June 15, 2022, January 1, 2023, and January 1, 2024. Additionally, Council directed that the Proposition 218 hearing notice be provided including a Delayed Rate Implementation increase beginning in May 1, 2022. Consistent with the Franchise Agreement, SCSS mailed the required Proposition 218 Notice to affected customers and property owners, as shown in Attachments 4 and 5.

ANALYSIS OF ISSUES:

The Report proposes Solid Waste rate increases of 22.19%, plus a delayed rate implementation of 5.12%, totaling 27.31% on June 15, 2022. The Delayed Rate Implementation increase is proposed to end December 31, 2022. Beginning January 1, 2023, rates will lower to an increase representing 22.19%, plus any changes related to CPI for “controllable” operating costs and plus any changes in “pass-through costs.” On January 1, 2024, rates will be the January 1, 2023 rates, plus any changes related to CPI for “controllable” operating costs and plus any changes in “pass-through costs.”

In summary, single family residential customers will see the following increases, if approved:

Single Family Residential	Current Rate	May 1 retroactivity, 27.31% New Rate
32-gallon Container	\$ 19.46	\$ 24.78
64-gallon Container	\$ 25.29	\$ 32.19
96-gallon Container	\$ 31.13	\$ 39.63

In addition, the IWMA’s increased fees adopted on March 9, 2022, will also be passed through to customers. As explained in the April 12, 2022 staff report, the IWMA has taken the lead in implementing SB 1383 on behalf of its member agencies. Following the County’s exit from the IWMA, it became necessary for the IWMA to reevaluate its fees in light of the anticipated loss of revenue from the customers within the unincorporated areas of the County. This reevaluation resulted in a delay in adoption of revised fees, which are levied on the haulers and ultimately passed through to customers. At its March 9, 2022 IWMA Board of Directors meeting, the Board adopted revised fees establishing a solid waste management fee of 5.4% of gross hauler receipts. This revised fee alters the structure previously used by the IWMA, which had included the following: (1) 2% of the

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gross revenue collected from commercial customers; and (2) the solid waste management fee of \$0.30 per month for residential accounts charged less than \$50 per month and a 2% fee for residential accounts paying more than \$50 a month. The new fee no longer charges different fees related to commercial and residential accounts and instead charges an overall fee equivalent to 5.4% of the hauler’s gross receipts, calculated based on the gross receipts amounts used to determine the hauler’s franchise fee obligations to its franchisors.

The proposed IWMA fee with the temporary Delayed Rate Implementation increase is shown in the table below:

Single Family Residential	Current Rate	May 1 retroactivity, 5.4% New Rate
32-gallon Container	\$ 0.30	\$ 1.34
64-gallon Container	\$ 0.30	\$ 1.74
96-gallon Container	\$ 0.30	\$ 2.14

If there is no majority protest, the proposed rate increase will be implemented starting July 1, 2022. SCSS is authorized to bill this fee to the rate payers benefiting from these additional services in compliance with Proposition 218.

With the proposed increase, solid waste rates for Arroyo Grande are among the lowest in the Central Coast area for single family residential services, as shown in the following table:

	Container Size (Gallons)		
	30-40	60-70	90-101
Atascadero	\$28.55	\$44.50	\$55.77
Morro Bay	22.88	45.76	68.64
Paso Robles	30.90	51.12	57.25
San Luis Obispo*	22.51	45.03	67.56
Santa Maria	na	30.69	34.81
San Miguel	28.23	44.48	61.06
Templeton	31.40	45.01	44.48
Proposed: South County Sanitation Service Area			
Arroyo Grande	23.78	30.90	38.04
Grover Beach	21.57	29.14	36.69
Oceano CSD	18.13	26.09	51.06
Pismo Beach	21.15	42.32	63.47

** Proposed 2022 rates scheduled for review in April 2022*

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Proposition 218 Process

The City's practice is to apply the provisions of Proposition 218 to solid waste rates and to require that all property owners and tenant customers receiving solid waste collection services receive written notice by mail at least 45 days prior to the City Council consideration of approving solid waste rate adjustments. The notice must include the amount of the fee, the basis on which the fee was calculated and the date, time and place of the public hearing and must clearly advise of the right to protest the fee increase. Proposition 218 notices for the contemplated rate adjustments were mailed by April 29, 2022. A copy of the mailed notice is provided in Attachments 4 and 5.

If written protests to the proposed rate increase are received from a majority of affected parcels, the City Council may not adopt the proposed rates. There are currently 8,807 parcels in Arroyo Grande receiving solid waste collection services. Therefore, 4,404 protests would represent a majority. According to State law, one written protest per parcel will be counted toward reaching a majority. The protest must be submitted in writing, signed by the property owner or the authorized representative of the property owner, or the tenant customer. At the time this report was prepared, there were 11 protest letters received. Protests have been accepted via email as well as by mail, and will be accepted up to the close of the public hearing. At that time, the total protests received will be counted and, if no majority protest has occurred, Council may adopt the proposed Resolution setting forth the solid waste rates that will go into effect on June 15, 2022.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Conduct a public hearing and consider protests regarding the proposed solid waste rate adjustments identified in the notice of public hearing, based on the Solid Waste Rate Review; and 2) if there is no majority protest, adopt a Resolution establishing new Solid Waste rates effective June 15, 2022, January 1, 2023, and January 1, 2024; or
2. Provide other direction to staff.

ADVANTAGES:

Approval of the rate increase is consistent with the terms of the existing rate setting methodology set forth in the Franchise Agreement and the quality of service provided by SCSS has been good. Therefore, the recommended action will enable continuation of uninterrupted solid waste collection and recycling services at a reasonable cost.

DISADVANTAGES:

Customers will experience higher solid waste collection and recycling costs.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

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PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Proposition 218 notices for the proposed rate adjustments were mailed by April 29, 2022. On Friday, June 3, 2022 the public hearing notice was published in The Tribune and on the City's website.

Of the eleven protest letters received as of June 8, 2022 (Attachment 6), one protest letter provided information about opposing the 5.12% delayed rate implementation increase. One protest letter provided information about opposing the increase due to the fact that there are no other garbage service options. One protest letter provided information about opposing the increase related to timing, as well as the percentage amount of each of the rate increases. The remaining 8 simply stated that they would like to protest the increase.

Attachments:

1. Proposed Resolution
2. Solid Waste Rate Review
3. April 12, 2022 Staff Report
4. Proposition 218 Public Notice – Residential
5. Proposition 218 Public Notice – Commercial
6. Written Public Comment