



PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

**Tuesday, February 28, 2023
4:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – MARK HUMBERT

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION

For in-person attendees, face coverings or masks that cover both the nose and the mouth are required. Physically distanced seating will be available. If you are feeling sick, please do not attend the meeting in person.

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To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://cityofberkeley-info.zoomgov.com/j/1610465939>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 046 5939**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – New Business

- 1. Five Year Zero Waste Rate Schedule**
From: City Manager
Recommendation: Provide input on proposed Five Year Zero Waste Rate Schedule.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 23rd day of February, 2023.



Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Date: February 23, 2023
Mark Numainville, City Clerk

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:*

- 1) *No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred.*
- 2) *In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

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and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor

Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901

Email: clerk@cityofberkeley.info

Libraries: Main – 2090 Kittredge Street,

Claremont Branch – 2940 Benvenue, West Branch – 1125 University,

North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

Please refrain from wearing scented products to this meeting.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.



Office of the City Manager

ACTION CALENDAR
February 28, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Public Works
 Subject: Five Year Zero Waste Rate Schedule

RECOMMENDATION

Provide Input on Proposed Five Year Zero Waste Rate Schedule.

SUMMARY

City Council approved a five year Zero Waste rate schedule on May 20, 2014. Since the schedule's expiration on June 30, 2019, rates have remained flat in absolute terms and will remain flat unless City Council adopts a new rate schedule. A new rate schedule can address cost escalation and help ensure the Zero Waste Fund has the resources to achieve the City's goal of Zero Waste.

Staff seeks City Council's input on a proposed five year rate schedule before requesting City Council's formal action to initiate the prescribed Proposition 218 process for adjusting rates. These rates, if there is no majority protest and City Council adopts them, would be effective July 1, 2023.

Proposition 218 requires the rates charged to customers approximate the costs to serve customers. The cost-of-service approach results in significant increases for residential customers at the most common subscription level.

FUTURE ACTION

After gaining the City Council's input in this special meeting, Public Works will return to City Council on April 11 to seek authorization to proceed with a Proposition 218-compliant process to adopt a new five year rate schedule. Should City Council approve the initiation of that process on April 11, notices will be mailed to Berkeley property owners before the end of April. These notices will describe how residents can submit written protests and identify City Council's June 13 public hearing. At that public hearing, the City Clerk will determine whether a majority protest exists. Per Proposition 218, a majority protest exists if 50% plus one of Berkeley's property owners submit valid protests of the proposed rates. If a majority protest exists, the proposed rates cannot move forward. If no majority protest exists, then City Council can consider approval of new rates. Approved rates would be in effect on July 1, 2023.

CURRENT SITUATION AND EFFECTS

The proposed rate schedules ensure sustainable and stable funding of the Zero Waste Fund to support City Strategic Plan Goals to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; be a global leader in addressing climate change, advancing environmental justice, and protecting the environment; and be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

The activities of the Zero Waste Division (ZWD) are funded by the Zero Waste Fund, an enterprise fund in which sufficient revenue must be generated to cover ZWD costs. City staff have worked with HF&H Consultants to review and analyze costs associated with the City's collection and recycling programs, other programs such as Clean Cities (street sweeping, illegal dumping, and other cleanups), and services that make progress toward the City's Zero Waste goal.

The proposed rate schedules are required by California statute to reflect the collection costs of each material stream, and the facilities, vehicles, and equipment needed to support source separation of all material types.

The proposed rate schedule would provide sufficient revenue for the following:

- ZWD's forecasted operations based on projections from actual and planned costs:
 - residential collection and processing costs of all material types, including refuse, recycling, and composting;
 - commercial collection and processing costs of all material types, including refuse, recycling, and composting;
 - off-site hauling and composting of green/food waste for all customers, and
 - off-site hauling, sorting, and marketing of construction and demolition debris for all customers; and
 - contract costs related to the above services:
 - residential curbside recycling collection (Ecology Center's 10 year contract with not-to-exceed (NTE) of \$54.5 million through June 30, 2031);
 - collected recyclables' sorting and marketing (Community Conservation Centers' 10 year contract with NTE of \$30.1 million through June 30, 2031);
 - organics hauling and composting (Recology's - Blossom Valley Organics North's nine year contract with NTE of \$26.7 million through February 28, 2025); and
 - landfill disposal (Waste Management's – Altamont Landfill 15 year contract with NTE of \$32.7 million through December 31, 2026);

- note there is some uncertainty with the revenue and expense from recyclables' sorting and marketing, where these expenses have generally risen but revenue dropped precipitously from 2015 to 2019;
- AMCS, a \$1.5 million computerized management system to replace FUND\$ that will improve customer service/responsiveness, provide clear and concise invoicing, allow educational inserts, and support the City's preparation of required regulatory reports;
- \$6.773 million in pre-construction costs for the Solid Waste and Recycling Transfer Station's (SW&RTS) Replacement Project;
- reducing the quantities of recyclables, green and food materials currently thrown in the refuse cart and landfilled, and contamination in both dual stream and green/food scraps;
- cost of compliance and implementation of SB 1383, *Short-Lived Climate Pollutants for Organic Waste Methane Emissions Reductions*, Countywide Organics Reduction and Recycling Ordinance, AB 341 (mandatory commercial recycling), AB 1826 (mandatory organics recycling), and the City's *Single Use Foodware and Litter Reduction* and *Plastic Bag* ordinances;
- \$990,000 in average annual costs for Transfer Station stormwater repairs and maintenance to reduce trash and pollutants from entering waterways;
- cost to develop the recently initiated *Zero Waste Strategic Plan* and identify new and/or improved programs to achieve Zero Waste; and
- annual paving impact costs of \$1-\$2 million attributable to collection vehicles impact on the City's streets. These costs are based on collection vehicles' weight and loading, which impose a particular, specific, and quantifiable impact on the City's pavement.

The following costs could not be captured with sufficient precision and are not included in the proposed rate schedules: collection fleet's electrification and charging infrastructure, and construction costs for the SW&RTS's replacement.

To fund current operations, including those items discussed above, residential and commercial customer rates need to generate an additional 12%, 9%, 9%, 7%, and 4% over the next five fiscal years, FY 2024 through FY 2028, respectively.

Residential Rates. Figure 1 summarizes the current residential rates by container size and number of subscribers. Residential rates include homes with between one and four units.

Solid Waste Container Size	Current \$/mo.	# of Subscribers
20-gallon	\$27.30	3,077
32-gallon	\$43.66	13,670
45-gallon	\$61.38	21
64-gallon	\$87.28	5,585
96-gallon	\$130.87	1,087

Figure 1 Berkeley's Current Residential Rates and Number of Current Subscribers

Proposition 218 requires the rates charged to customers approximate the costs to serve them. The costs to serve customers varies by subscription level. For the 20-gallon and 32-gallon subscription levels, the FY 2024 cost of service is \$53.51 and \$58.34, respectively, which is 34-96% above the existing rates charged to these subscribers. On the other hand, existing rates for 64- and 96-gallon subscribers cover the cost to serve those containers in FY 2024. This is not uncommon to see. Historically, many communities set rates for the smaller containers at something less than the cost-of-service to incentivize diversion. However, in accordance with Proposition 218, rates are set to cover costs.

To minimize the immediate rate impact of the cost-of-service approach, staff recommends a phased-in approach that limits annual rate increases for monthly service to \$6.00. For example, the FY 2024 20-gallon cost-of-service is \$26.21 per month higher than the current rate. Instead of raising the rate all at once, the FY 2024 rate for the 20-gallon service is proposed to increase by \$6.00 per month, to \$33.30 per month. For rates that cover their cost-of-service, these rates remain flat. Figure 2 summarizes the phased-in approach to residential rates across the subscription levels over the next five fiscal years. Zero Waste Fund balance would offset the lower revenues resulting from the phased-in approach.

Solid Waste Container Size	Current \$/mo.	FY 2024 \$/mo.	Change \$/mo.	FY 2025 \$/mo.	Change \$/mo.	FY 2026 \$/mo.	Change \$/mo.	FY 2027 \$/mo.	Change \$/mo.	FY 2028 \$/mo.	Change \$/mo.
20-gallon	\$27.30	\$33.30	\$6.00	\$39.30	\$6.00	\$45.30	\$6.00	\$51.30	\$6.00	\$57.30	\$6.00
32-gallon	\$43.66	\$49.66	\$6.00	\$55.66	\$6.00	\$61.66	\$6.00	\$67.66	\$6.00	\$73.66	\$6.00
45-gallon	\$61.38	\$66.63	\$5.25	\$72.63	\$6.00	\$78.63	\$6.00	\$84.63	\$6.00	\$88.09	\$3.47
64-gallon	\$87.28	\$87.28	\$0.00	\$87.28	\$0.00	\$89.83	\$2.55	\$95.83	\$6.00	\$99.96	\$4.13
96-gallon	\$130.87	\$130.87	\$0.00	\$130.87	\$0.00	\$130.87	\$0.00	\$130.87	\$0.00	\$130.87	\$0.00

Figure 2 Residential Proposed Rate Schedule (FY 2024-FY 2028)

Approximately 80 percent of residential refuse subscribers use a 32-gallon cart or a 64-gallon cart. Effective July 1, 2023, for 32-gallon cart subscribers, monthly rates would increase from \$43.66 monthly to \$49.66, or \$6.00 per month, which translates to a 13.7% increase. FY 2025-2028 rates for 32 gallon containers would increase between 8.9-12.1% annually. Subscribers with a 64-gallon cart would not see an increase in FY 2024 or 2025, as their rates cover cost-of-service. FY 2026-2028 rates would increase between 2.9-6.7% annually.

This schedule brings residential rates more in line with the costs of servicing customers at these subscription levels. None of the proposed rate schedules reflect staff’s policy preferences. These proposed rates reflect appropriate and accurate costs of serving customers’ refuse, recyclables, and compost needs. The only exception is, where significant rate increases were required, staff attempted to moderate these increases over the five-year schedule to lessen the immediate detrimental rate impacts on these customers.

As shown in the tables below, Berkeley’s proposed rate for 32- gallon carts in FY 2024 would be in the mid-range of comparable cities.

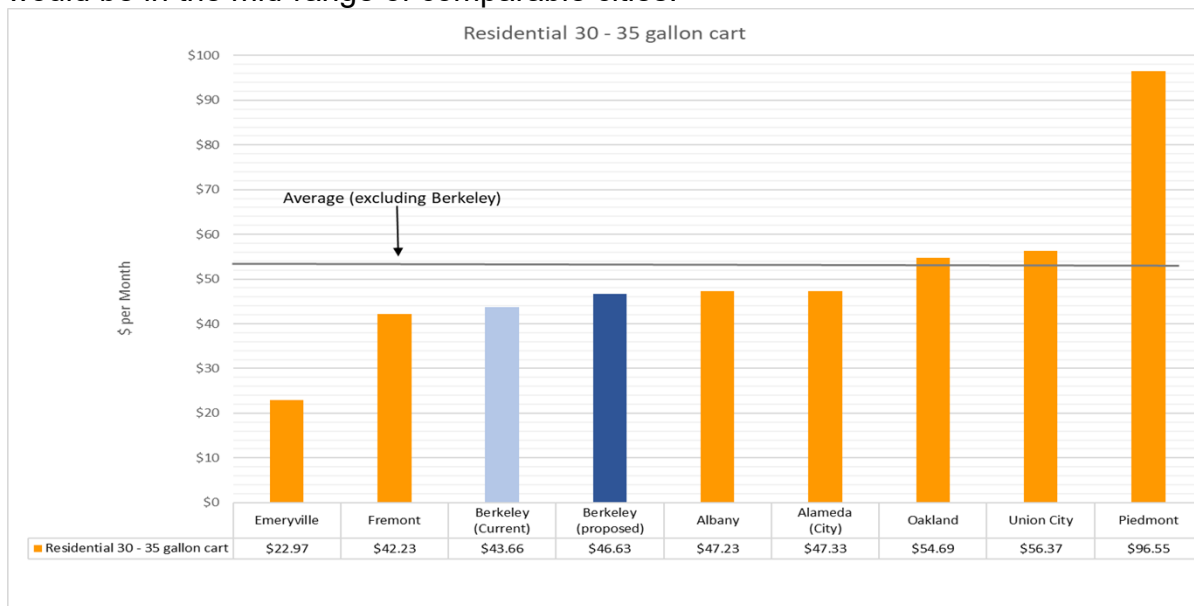


Figure 3 Berkeley's 32-Gallon Rate in Comparison to Other Cities

The comparison for 64-gallon carts is in Figure 4.

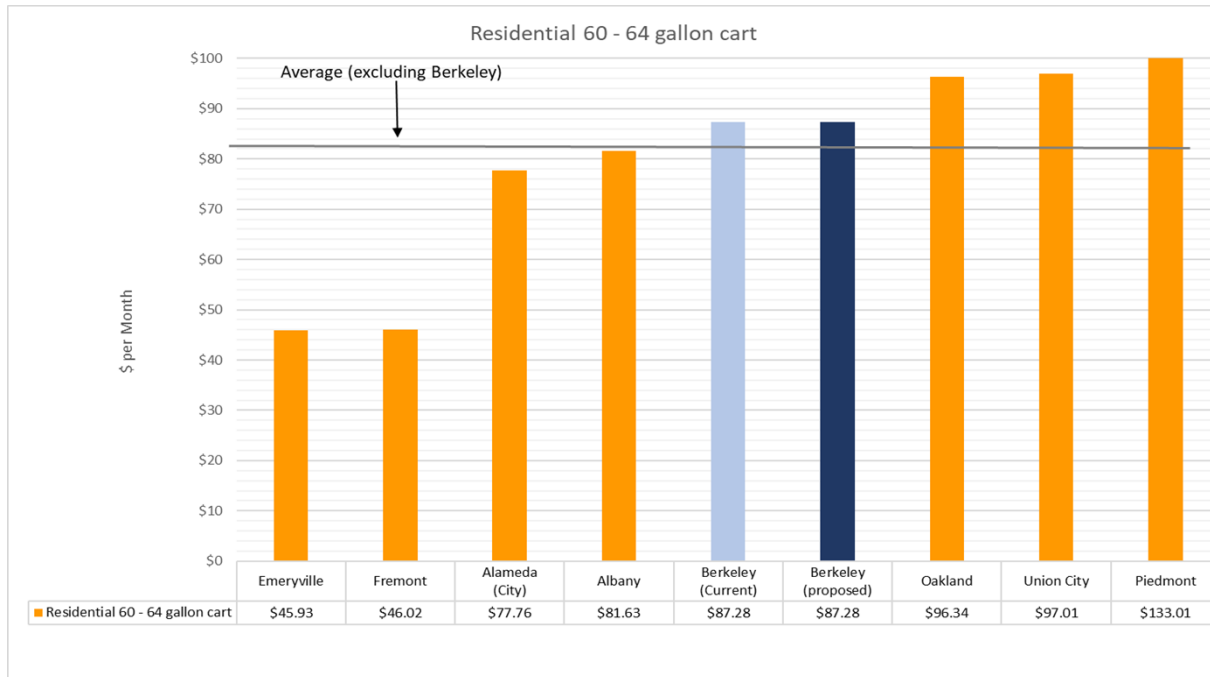


Figure 4 Berkeley's 64-Gallon Rate in Comparison to Other Cities

Comparing FY 2025-2028 rates with comparable cities is not possible given these cities have not yet set rates for future years.

Equity. City Council has incorporated equity into Public Works' services, e.g., BerkDOT, equity zone in the City's paving plan, and expansion of low income discount offering for customers paying sewer fees. In a similar vein, staff recommend Zero Waste rates be added to the City's *Very Low Income Refund* program. This program provides residents who meet U.S. Department of Housing and Urban Development's very low income definition a full refund on Berkeley-specific taxes and fees. Given Proposition 218, these refunds must be covered by non-Zero Waste rate revenue, most likely the General Fund. Staff estimate \$100,000 in General Funds would enable Zero Waste rates to join the City's existing *Very Low Income Refund* program.

Commercial Rates. Commercial rates include commercial properties and homes with 5 units or more. Currently, commercial collection costs are allocated to refuse collection carts or containers, green and food waste carts and containers (charged at 80% of refuse rates), and recyclables are collected at no charge. The cost-of-service analysis found the projected commercial revenue at current rates nearly equal to the FY 2024 costs to provide commercial services. Accordingly, all current commercial rates are proposed to increase only 0.4% for FY 2024.

For FYs 2025-2028, to keep these rates at the cost of service, the proposed rate schedule includes annual revenue increases of 9%, 9%, 7%, and 4%, respectively. However, the rates to produce this level of revenue vary according to cost of service.

Proposed commercial rates for the most common subscription levels are provided in the table below.

Solid Waste Container Size	# of Customers	Current \$/mo.	% Chg:					FY 2028 vs. Current	Avg. Incr. \$/mo.
			FY 2024 \$/mo.	FY 2025 \$/mo.	FY 2026 \$/mo.	FY 2027 \$/mo.	FY 2028 \$/mo.		
32-gallon, 1x/wk	528	\$35.89	\$36.02	\$ 39.26	\$ 42.79	\$ 45.79	\$ 47.62	\$11.73	\$2.35
64-gallon, 1x/wk	479	\$71.74	\$72.01	\$ 78.49	\$ 85.55	\$ 91.54	\$ 95.20	\$23.46	\$4.69
96-gallon, 1x/wk	518	\$107.57	\$107.97	\$ 117.69	\$ 128.28	\$ 137.26	\$ 142.75	\$35.18	\$7.04
96-gallon, 2x/wk	148	\$225.92	\$226.76	\$ 247.17	\$ 269.42	\$ 288.28	\$ 299.81	\$73.89	\$14.78
1 CY, 1x/wk	226	\$173.77	\$174.41	\$ 190.11	\$ 207.22	\$ 221.73	\$ 230.60	\$56.83	\$11.37
2-CY, 1x/wk	160	\$327.29	\$328.50	\$ 358.07	\$ 390.30	\$ 417.62	\$ 434.32	\$107.03	\$21.41

Figure 5 Commercial Proposed Rate Schedule (FY 2024-FY 2028)

Input to date from Zero Waste Commission Subcommittee. Public Works briefed the Zero Waste Commission’s subcommittee on the five year rate schedule on February 9 and 23. The subcommittee expressed concern over the size of the residential rate increase on 32 gallon (and less) subscribers, and over the tension between Proposition 218’s cost of service approach and the City’s policy preference to incentivize subscribers to fewer gallon containers (and less waste).

Ways to lessen the size of the rate increase are discussed below under *Alternatives*. Some of the subcommittee’s ideas for incentivizing recycling and reducing rates, i.e., customers opting out of collection service or for garbage collection once every two weeks, may be suited for consideration as part of the recently initiated *Zero Waste Strategic Plan*.

Staff and the subcommittee are discussing a legislative approach to address the policy tension between Proposition 218’s cost of service approach and incentivizing less waste. The City Council could take action to request the California legislature to consider state law changes that would grant the City more flexibility to use rate structures that further the City’s adopted policy goals.

BACKGROUND

To assess customers’ views of these collection services, Public Works contracted with a public opinion research firm to conduct a scientific survey in May 2021 of both residential and commercial customers. The survey contacted 520 residential and commercial customers, and the results have a margin of error of 4.9% for residential and 10.4% for commercial. The survey found that:

- residential customers have a high satisfaction with the City’s recycling, composting, and garbage collection services. Customer satisfaction ranged from 84-92%, which was at or above satisfaction levels for comparable utilities. In addition, 70% of residential customers found rates reasonable (10% unreasonable), outpacing other comparable utilities by 6-17%.

- commercial customers had positive satisfaction, but were less satisfied with services and rates than residential customers. Between 61-63% of commercial customers were satisfied with services, which is 12% or more below comparable utilities. On the other hand, nearly half of commercial customers found rates reasonable, which was on par with commercial customers' views of other utilities' rates.
- customers were very positive about their experiences at the Transfer Station and Berkeley Recycling (85-91% satisfaction).

The City's progress toward Zero Waste continues to fall short. As shown in *Public Works' Performance and Work Measures* at <https://berkeleyca.gov/your-government/about-us/departments/public-works>, the City's landfill diversion rate as of 2021 was 74%, which is short of the City's vision to be a global leader in this regard.

ZWD's focus on customer service and the Zero Waste goal have been frustrated by a high staff vacancy rate. Public Works' current vacancy rate stands at 15%. In the past two years, ZWD's effective vacancy climbed on some days to 42%. For ZWD, the vacancy rate has direct impacts on customer service. Fewer staff means drivers are assigned to collect two routes per day (versus one), and are less familiar with the second route, leading to more missed pickups.

There are glimmers of hope, however. In the last six months, ZWD's vacancy rate has reduced to 8%. In addition, Public Works has brought aboard a consultant team to work with City staff, the Zero Waste Commission, community, and City Council to develop a *Zero Waste Strategic Plan* that will set the course for the City and division in achieving Zero Waste.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed rate schedules ensure that the ZWD will generate sufficient revenues to continue to provide services that strive toward the City's Zero Waste Goal, which is a key component of the 2009 Climate Action Plan; to advance the pre-construction phase of the Solid Waste and Recycling Transfer Station Replacement Project; to comply with various state legislation to improve the commercial sector's recycling and composting; to implement the City's *Single Use Foodware and Litter Reduction* and *Plastic Bag* ordinances; and deliver these programs with a modernized fleet using computerized financial and routing systems and reasonable replacement schedule for carts/bin and other capital needs. These environmental, sustainable, and climate goals would be compromised by a Zero Waste Fund that is not financially self-sufficient.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

A sustainable Zero Waste Fund is an important contributor to the City's progress on Zero Waste, vehicle electrification, and compliance with the many City and state laws related to diversion from landfills. The table below shows the fund impacts should the

proposed rates be approved by City Council. At the end of the five year period, the proposed rates would enable the Zero Waste Fund to maintain a 30-day operating reserve (solid blue line remains above the dotted red line). Continuing with existing rates leads to a negative fund balance (dotted blue line) before the end of FY 2024 – 2025.

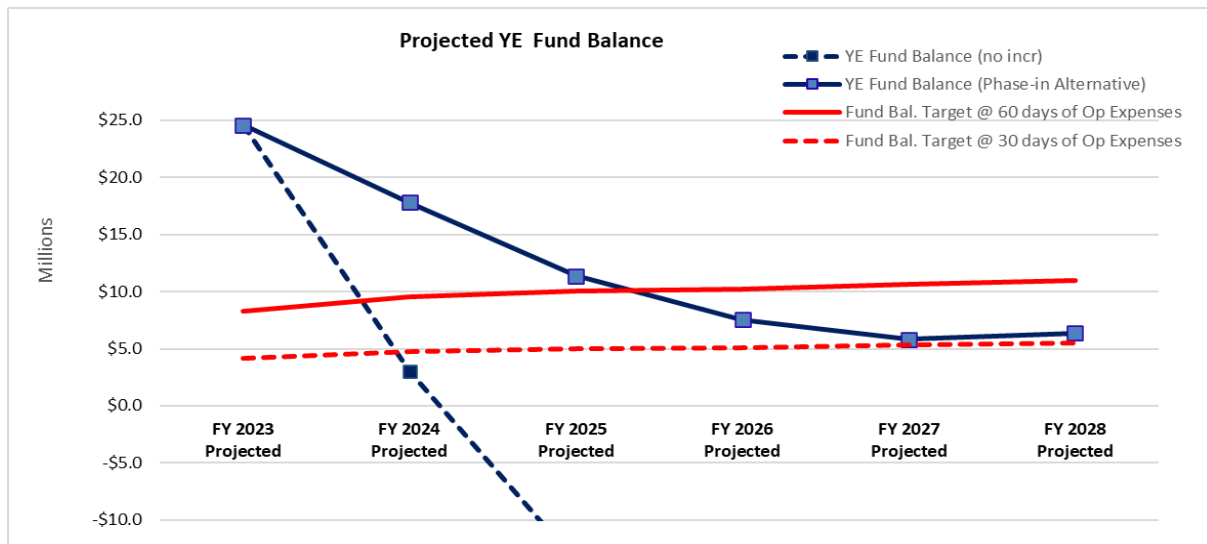


Figure 6 Zero Waste Fund Balances

ALTERNATIVE ACTIONS CONSIDERED

Staff considered a no action alternative, but that would result in a negative Zero Waste Fund balance within the five-year period of the rate schedule and impede progress toward the City’s Zero Waste goal.

City Council could reduce the rate impacts by removing costs from the five year rate schedule. Possibilities include:

- Eliminate (or reduce) the paving impact costs of \$7 million attributable to ZWD collection vehicles on the City’s streets. The schedule includes \$1M annually for FYs 2024-2026 and \$2M annually for FYs 2027-2028.
- Eliminate, find other funds, or reduce the \$6.773M for pre-construction costs for the Transfer Station Replacement.
- Find other funds to substitute for ZW funds, e.g., \$7.4M estimated for compliance with SB 1383 and stormwater regulations.

City Council could delay the rate adjustment, leaving the rates flat for a fourth consecutive fiscal year. This would require the use of more fund balance to cover operations until a new rate schedule was approved, and may require future rate adjustments be larger than the ones suggested in this staff report.

CONTACT PERSON

Leticia Jauregui, Acting Solid Waste & Recycling Manager, Public Works, 981-6359
Liam Garland, Public Works Director, 981-6303