

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Environmental Services	DATE: 09/17/2013
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SUBJECT: Amendments to Construction and Demolition Debris Diversion Ordinance and Adjustments to Deposit Schedule

PRIMARY CONTACT (NAME, PHONE): Meghan Cannis, 858-492-5009 MS1103-B	SECONDARY CONTACT (NAME, PHONE): Ken Prue, 858-492-5085 MS1103-B
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):** There is no cost associated with this item. The changes to the Deposit Schedule are anticipated to produce an estimated 32% reduction, over \$3M annually, in the value of deposits collected, and an estimated 25% reduction in the number of permits subject to the C&D Ordinance.

Forfeited deposits are approximately \$1M per year and are expected to remain at this level through FY17 due to the number of permits in the system and the amount of time applicants have to request a refund.

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Equal Opportunity Contracting	ORIG DEPT.	Sierra, Mario	9/18/2013
Financial Management	CFO		
Comptroller	DEPUTY CHIEF		
Liaison Office	COO		
Environmental Analysis	CITY ATTORNEY	Lowenberg, Grace	

		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:	<input checked="" type="checkbox"/> RESOLUTIONS	<input checked="" type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)	
<p>1. Amending Chapter 6, Article 6, Division 6 of the San Diego Municipal Code by amending sections 66.0601, 66.0606 and 66.0608 all relating to the diversion of construction and demolition debris from landfill disposal.</p> <p>2. Approving the revised Deposit Schedule for the City's Construction and Demolition Debris Diversion Program.</p>					
<b>STAFF RECOMMENDATIONS:</b> Approve the requested actions.					
<b>SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)</b>					
<b>COUNCIL DISTRICT(S):</b>		All			
<b>COMMUNITY AREA(S):</b>		All			
<b>ENVIRONMENTAL IMPACT:</b>		This activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15060(c)(3), 15378(a), and 15378(b)(4) because this activity constitutes government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment.			
<b>CITY CLERK INSTRUCTIONS:</b>		This item is subject to Charter Section 99 (10 day published notice, approval by Ordinance and 6 votes required)			

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 09/17/2013

ORIGINATING DEPARTMENT: Environmental Services

SUBJECT: Amendments to Construction and Demolition Debris Diversion Ordinance and Adjustments to Deposit Schedule

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Meghan Cannis/858-492-5009 MS1103-B

**DESCRIPTIVE SUMMARY OF ITEM:**

The Environmental Services Department (ESD) is seeking the approval of amendments to the Construction and Demolition (C&D) Debris Deposit Ordinance (C&D Ordinance) and revisions to the Deposit Schedule. The proposed changes will make the ordinance more effective, fair, and efficient in achieving the goals of the C&D Ordinance.

**STAFF RECOMMENDATION:**

Approve the requested actions.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

The City's Construction and Demolition (C&D) Debris Deposit Ordinance (C&D Ordinance) was implemented on July 1, 2008. The C&D Ordinance is a key component in the City's efforts to preserve landfill capacity and comply with state-mandated waste diversion requirements (Assembly Bill 939 (1989)). The C&D Ordinance creates an economic incentive to recycle C&D debris through the collection of fully refundable deposits which are returned, in whole or in part, upon proof of the amount of C&D debris the project applicant diverted from landfill disposal. If the project applicant fails to show proof of diversion, the deposit is forfeited. The Development Services Department (DSD) collects the refundable diversion deposit for specific building construction, demolition or remodeling projects when a building permit or demolition/removal permit is issued. Deposits are held in the Recycling Enterprise Fund, and the Environmental Services Department (ESD) processes the refunds in accordance with the C&D Ordinance.

Deposit amounts vary according to the project type and size. The deposit applies to the entire area(s) where the work will be performed and is calculated on the square footage. Certain projects and activities are exempt from the deposit requirement. Exempt projects currently include pools, decks, carports, fences, retaining walls, projects that only require a plumbing, electrical or mechanical permit, projects generating only hazardous waste and projects with a calculated deposit below the established \$200 minimum deposit threshold.

During the first five years after implementation of the C&D Ordinance, approximately 12,400 permits have been subject to a C&D deposit. Applicants have paid over \$32M in deposits, of which \$19M of the requested \$19.4M in deposits has been refunded for the 5,400 projects that have complied with the requirements. 3,550 projects did not comply with the requirements and therefore forfeited \$3.67M in deposits. The balance of \$9M represents deposits on projects in progress for which refund requests have not yet been submitted or are pending. The 5,400

projects that met the C&D Ordinance requirements for a refund achieved an average diversion rate of 68.8%. The C&D Ordinance has helped establish a C&D debris recycling infrastructure that is also a benefit to the region. The regional mixed C&D debris recycling facilities alone have recycled over 470,000 tons of C&D materials.

After carefully evaluating the program since the implementation of the C&D Ordinance, ESD believes some revisions to the C&D Ordinance would be useful to more effectively, fairly, and efficiently achieve the goals of the C&D Ordinance. Specifically, experience has shown that some projects do not generate recyclable debris or enough debris to warrant application of the C&D Ordinance. ESD recommends revising the list of exemptions from the C&D Ordinance to include additional exempt activities. The recommended additions to the list of exemptions includes: all roofing projects, commercial shade structures, awnings, canopies, antennas, pre-fabricated modular buildings, mobile homes, partitions, facades, siding, stucco, veneer, seismic tie-downs, skylights, windows, doors, stair flights, poles, re-pipe repairs, foundation repairs, and developments which require building permits that do not require plans.

In order to trigger the C&D Ordinance's 75% waste diversion requirement from the current 50%, a sufficient level of mixed C&D debris recycling capacity will be needed in the region. Thus, ESD recommends revising the C&D Ordinance to specify that in order to trigger that higher diversion level, a mixed C&D debris recycling facility with a permitted daily tonnage capacity of at least 1,000 tons must have been operating with a sustained 75% diversion rate for three consecutive calendar year quarters.

In order to simplify the deposit schedule, ESD recommends decreasing the number of deposit categories from ten to three, adjusting the size threshold for certain projects, adjusting some deposit per square foot amounts, and capping the square footage subject to deposit for all deposit types.

#### FISCAL CONSIDERATIONS:

There is no cost associated with this item. The changes to the Deposit Schedule are anticipated to produce an estimated 32% reduction, over \$3M annually, in the value of deposits collected, and an estimated 25% reduction in the number of permits subject to the C&D Ordinance.

Forfeited deposits are approximately \$1M per year and are expected to remain at this level through FY17 due to the number of permits in the system and the amount of time applicants have to request a refund.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

NR&C: March 16, 2005  
NR&C: September 5, 2007  
NR&C: October 24, 2007

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Efforts included outreach to, and meetings with, stakeholders, including Development Services Department's Technical Advisory Committee.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders include City Departments, Building Permit and Demolition/Removal Permit applicants, contractors and City residents and businesses who use the Miramar Landfill. The C&D Ordinance and the amendments thereto are intended to extend the life of the Miramar Landfill, assist the City in maintaining state-mandated diversion requirements and avoid state penalties.

Sierra, Mario

Originating Department

\_\_\_\_\_  
Deputy Chief/Chief Operating Officer

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6,  
DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTIONS 66.0601, 66.0606, AND 66.0608,  
ALL RELATING TO DIVERSION OF CONSTRUCTION  
AND DEMOLITION DEBRIS FROM LANDFILL DISPOSAL.

WHEREAS, since 1959, the City of San Diego [City] has owned and operated the Miramar Landfill [Landfill], which currently is the only active landfill within the City; and

WHEREAS, the Landfill is expected to close by 2022; so preserving Landfill capacity in order to extend the useful life of the Landfill for the benefit of the citizens of the City is of paramount concern; and

WHEREAS, the California Integrated Waste Management Act of 1989, codified at California Public Resources Code sections 40000 through 49620, requires that each local jurisdiction in the State divert at least 50% of waste from landfill disposal or face fines up to \$10,000 per day; and

WHEREAS, the City enacted the Construction and Demolition Debris Diversion Deposit Program Ordinance [C&D Ordinance], codified at San Diego Municipal Code sections 66.0601 through 66.0610, in order to preserve Landfill capacity, extend the useful life of the Landfill, comply with state-mandated waste diversion requirements, and avoid state fines; and

WHEREAS, prior to the implementation of the C&D Ordinance and the construction and demolition debris surcharge at the Landfill, at least 35%, or 586,000 tons, of waste disposed to local landfills each year originated from construction and demolition projects within the City; and

WHEREAS, a private recycling facility which accepts mixed construction and demolition debris has been operating just outside City limits in a relatively central location since 2008, and two additional facilities are operating within the County of San Diego; and

WHEREAS, based on experience gained since the C&D Ordinance became effective approximately five years ago, the City believes some revisions to the C&D Ordinance would be useful to more effectively, fairly, and efficiently achieve the goals of the C&D Ordinance; and

WHEREAS, experience has shown that some projects do not generate recyclable debris or enough debris to warrant application of the C&D Ordinance, so the list of exemptions from the C&D Ordinance should be revised to include additional exempt activities; and

WHEREAS, experience suggests that, in order to trigger a higher diversion requirement under the C&D Ordinance, a mixed construction and demolition debris recycling facility must be operating at a minimum daily tonnage capacity of 1,000 tons; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 6, Division 6 of the San Diego Municipal Code is amended by amending Sections 66.0601, 66.0606, and 66.0608 to read as follows:

**Division 6:**

**Construction and Demolition Debris Diversion Deposit Program**

**§ 66.0601 Findings**

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only active landfill in the City. The Miramar Landfill currently is expected to close by 2022. Preserving landfill capacity at the Miramar Landfill in order to extend

the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.

(b) through (e) [No change in text.]

**§ 66.0606 Entitlement to Refund of Diversion Deposit**

(a) through (c) [No change in text.]

(d) If the *Director* determines the *applicant* is entitled to a refund, the amount of the refund shall be in the same proportion to the deposit paid by the *applicant* as the *diversion* rate achieved for the *development* is to the applicable *diversion* rate set forth below:

- (1) For Building Permits or Demolition/Removal Permits issued on or after the actual effective date of Section 66.0604 through and including 180 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall be 50% by weight of the total *construction and demolition debris* generated by the *development*; and
- (2) For Building Permits or Demolition/Removal Permits issued after 180 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall be 75% by weight of the total *construction and demolition debris* generated by the *development*, provided that a *certified recycling facility* which accepts mixed *construction and demolition debris* is operating within 25 miles of the City Administration Building located at 202 "C" Street, San Diego, at a 75% *diversion* rate as of 181 calendar days from the actual effective date of Section 66.0604. If such a facility is not in operation as of 181 calendar days from the actual effective date of

Section 66.0604, the *diversion* rate shall remain as set forth in Section 66.0606(d)(1) until a *certified recycling facility* which accepts mixed *construction and demolition debris*, with a permitted daily tonnage capacity of at least 1,000 tons, has operated at a *75% diversion* rate for three consecutive calendar year quarters and the City has given the public 30 days' advance notice that such a facility is available, at which time the *diversion* rate shall increase to *75%* by weight of the total *construction and demolition debris* generated by the *development*.

(e) through (j) [No change in text.]

**§ 66.0608 Diversion Deposit Program Exemptions**

- (a) The following activities, alone or in combination with one another, are exempt from this Division, except if the activity or activities is/are undertaken in conjunction with *development* which otherwise is subject to this Division:
- (1) Roofing projects.
  - (2) Installation, replacement, or repair of a *retaining wall*.
  - (3) Installation, replacement, or repair of a carport, patio cover, balcony, trellis, or fireplace.
  - (4) Installation, replacement, or repair of a deck.
  - (5) Installation, replacement, or repair of a *fence*.
  - (6) Installation, replacement, or repair of a swimming pool or a spa.
  - (7) Installation, replacement, or repair of a pre-fabricated accessory, such as a *sign* or an antenna, which does not require modification to the *structure* to which the accessory is attached.

- (8) Installation, replacement, or repair of storage racks.
- (9) Installation, replacement, or repair of a shade structure (commercial), awning, or canopy.
- (10) Installation or replacement of a pre-fabricated modular building or mobile home, with or without a patio enclosure or cover.
- (11) Installation, replacement, or repair of partitions only.
- (12) Installation, replacement, or repair of siding, stucco, or veneer.
- (13) Installation or repair of seismic tie-downs.
- (14) Installation, replacement, or repair of skylights, windows, doors, stair flights, or poles.
- (15) Modification, alteration, or repair of facades.
- (16) Re-pipe repairs.
- (17) Foundation repairs, including caissons and piles.
- (18) *Development* which requires only an electrical permit, only a plumbing permit, or only a mechanical permit.
- (19) *Development* which requires a Building Permit that does not require plans.

(b) [No change in text.]

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Grace C. Lowenberg  
Deputy City Attorney

GCL:mb  
09/16/13  
Or.Dept:ESD  
Doc.No:619546

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of \_\_\_\_\_.

ELIZABETH S. MALAND, City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved pursuant to Charter section 265(i)

\_\_\_\_\_  
Date

\_\_\_\_\_  
TODD GLORIA, Council President

**STRIKEOUT ORDINANCE**

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6,  
DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTIONS 66.0601, 66.0606, AND 66.0608,  
ALL RELATING TO DIVERSION OF CONSTRUCTION  
AND DEMOLITION DEBRIS FROM LANDFILL DISPOSAL.

**Division 6:**

**Construction and Demolition Debris Diversion Deposit Program**

**§ 66.0601 Findings**

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only municipal active landfill in the City. The Miramar Landfill currently is expected to close ~~between 2011 and 2013.~~ by 2022. Preserving landfill capacity at the Miramar Landfill in order to extend the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.
- (b) through (e) [No change in text.]

**§ 66.0606 Entitlement to Refund of Diversion Deposit**

- (a) through (c) [No change in text.]
- (d) If the *Director* determines the applicant applicant is entitled to a refund, the amount of the refund shall be in the same proportion to the deposit paid by

the *applicant* as the *diversion* rate achieved for the *development* is to the applicable *diversion* rate set forth below:

- (1) For Building Permits or Demolition/Removal Permits issued on or after the actual effective date of Section 66.0604 through and including 180 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall be 50% by weight of the total *construction and demolition debris* generated by the *development*; and
- (2) For Building Permits or Demolition/Removal Permits issued after 180 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall be 75% by weight of the total *construction and demolition debris* generated by the *development*, provided that a *certified recycling facility* which accepts mixed *construction and demolition debris* is operating within 25 miles of the City Administration Building located at 202 "C" Street, San Diego, at a 75% *diversion* rate as of 181 calendar days from the actual effective date of Section 66.0604. If such a facility is not in operation as of 181 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall remain as set forth in Section 66.0606(d)(1) until 30 days after the City has notified the public a *certified recycling facility* which accepts mixed *construction and demolition debris*, with a permitted daily tonnage capacity of at least 1,000 tons, has operated at a 75% *diversion* rate for three consecutive calendar year quarters and the City has given the public 30 days' advance notice that such a facility is available, at which time the *diversion* rate shall increase to 75% by weight

of the total *construction and demolition debris* generated by the *development*.

(e) through (j) [No change in text.]

**§ 66.0608 Diversion Deposit Program Exemptions**

- (a) The following activities, alone or in combination with one another, are exempt from this Division, except if the activity or activities is/are undertaken in conjunction with *development* which otherwise is subject to this Division:
- (1) Roofing projects, ~~that do not include the tear-off of the existing roof.~~
  - (2) Installation, replacement, or repair of a *retaining wall*.
  - (3) Installation, replacement, or repair of a carport, patio cover, balcony, trellis, or fireplace.
  - (4) Installation, replacement, or repair of a deck.
  - (5) Installation, replacement, or repair of a *fence*.
  - (6) Installation, replacement, or repair of a swimming pool or a spa.
  - (7) Installation, replacement, or repair of a pre-fabricated accessory, such as a sign or an antenna, which does not require modification to the *structure* to which the sign accessory is attached.
  - (8) Installation, replacement, or repair of storage racks.
  - (9) ~~Development which requires only an electrical permit, only a plumbing permit, or only a mechanical permit.~~ Installation, replacement, or repair of a shade structure (commercial), awning, or canopy.
  - (10) Installation or replacement of a pre-fabricated modular building or mobile home, with or without a patio enclosure or cover.

- (11) Installation, replacement, or repair of partitions only.
- (12) Installation, replacement, or repair of siding, stucco, or veneer.
- (13) Installation or repair of seismic tie-downs.
- (14) Installation, replacement, or repair of skylights, windows, doors, stair flights, or poles.
- (15) Modification, alteration, or repair of facades.
- (16) Re-pipe repairs.
- (17) Foundation repairs, including caissons and piles.
- (18) Development which requires only an electrical permit, only a plumbing permit, or only a mechanical permit.
- (19) Development which requires a Building Permit that does not require plans.

(b) [No change in text.]

GCL:mb  
09/16/13  
Or.Dept:ESD  
Doc.No:619466

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6,  
DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTIONS 66.0601, 66.0606, AND 66.0608,  
ALL RELATING TO DIVERSION OF CONSTRUCTION  
AND DEMOLITION DEBRIS FROM LANDFILL DISPOSAL.

This ordinance updates the recycling provisions related to construction and demolition debris by (i) specifying that a mixed construction and demolition debris recycling facility must be operating, within the geographical limits described in the ordinance, in accordance with certain minimum requirements before the diversion rate required by the ordinance may be increased to 75%; and (ii) revising the list of exemptions to include additional exempt activities.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

GCL:mb  
09/16/13  
Or.Dept:ESD  
Doc.No:619558

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM**

**DATE:** August 20, 2013

**TO:** Committee on Natural Resources & Culture

**FROM:** City Attorney

**SUBJECT:** Proposition 26 Analysis of Proposed Amendments to Construction and Demolition Debris Diversion Deposit Program and Deposit Schedule

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**INTRODUCTION**

The Environmental Services Department (ESD) is considering amendments to the Construction and Demolition (C&D) Debris Diversion Deposit Program (C&D Ordinance) and adjustments to the associated deposit schedule (Deposit Schedule). The C&D Ordinance requires applicants for a building permit or demolition permit to post a fully refundable deposit as security to ensure that a certain percentage of the C&D debris generated by the development project is recycled rather than disposed to a landfill. After the adoption of the C&D Ordinance and the associated Deposit Schedule, the voters enacted Proposition 26 (Prop. 26), which augments pre-existing restrictions on the ability of local government to raise revenue. Our Office was asked to analyze these proposals in light of Prop. 26.

**QUESTIONS PRESENTED**

1. Are the proposed amendments to the C&D Ordinance subject to Prop. 26?
2. Are the revisions to the Deposit Schedule subject to Prop. 26?

**SHORT ANSWERS**

1. No. The proposed amendments to the C&D Ordinance are not subject to Prop. 26. Those amendments do not impose, extend, or increase any City levy, tax, charge, fee, or other monetary exaction.

2. Probably not. It is arguable that the C&D deposit is outside the scope of Prop. 26 because it is not the type of monetary payment to government that is targeted by Prop. 26. Even if the deposit is subject to Prop. 26, it is arguable that it is exempt as a charge imposed as a condition of property development. Further, forfeited deposits likely fall under the exemption for fines and penalties.

## BACKGROUND

In October 2005, the City enacted the C&D Ordinance, which was first implemented in mid-2008, after a certified private recycling facility that accepts mixed C&D debris for recycling opened in Lemon Grove, just outside City limits in a relatively central location. SDMC §§ 66.0601-66.0610. Waste composition studies at the time showed that recyclable C&D debris accounted for 35 percent of the waste disposed to local landfills, with about 400,000 tons per year of recyclable C&D debris disposed to the City's Miramar Landfill alone. The City had tried to encourage voluntary C&D recycling, but those efforts did not produce the desired results because it was less expensive to dispose of C&D debris at a landfill than to recycle it. In the meantime, the City was losing precious landfill capacity, having difficulty meeting state-mandated waste diversion goals, and facing state penalties because waste that could have been recycled or re-used was instead being thrown away.<sup>1</sup>

Under the C&D Ordinance, an applicant for a building permit or a demolition permit is required to submit a form describing the C&D waste types the applicant expects the project will generate and the applicant's plan for recycling at least 50 percent of that C&D waste. SDMC § 66.0604. Projects expected to generate little to no C&D debris are exempt. SDMC § 66.0608. At the time the permit is issued, the applicant must post a fully refundable deposit calculated based on square footage and type of project. SDMC § 66.0604(b); San Diego Resolution R-303806 (Jun. 13, 2008). At the conclusion of the project, the applicant is entitled to a refund of the full amount deposited so long as the applicant demonstrates that it has recycled, re-used, or donated at least 50 percent by weight of the C&D debris generated by the project. If the applicant achieves less than 50 percent diversion, the refund is prorated. If the applicant fails to comply, the applicant forfeits the deposit. SDMC § 66.0606.

The deposit is designed as an economic incentive to recycle C&D debris in order to preserve landfill capacity, meet state-mandated diversion requirements, and avoid state penalties. SDMC § 66.0602. It operates as both security and an enforcement mechanism. The deposit is collected as security to ensure compliance with the C&D Ordinance; it is retained, in whole or in part, only if the applicant fails to comply with the C&D Ordinance requirements. Retention of the deposit is the City's only enforcement tool under this Ordinance. Accordingly, the deposit amounts were established at levels City staff determined were necessary to incentivize recycling, i.e., to make the cost of disposal and the cost of recycling roughly equal so that generators would choose to recycle.<sup>2</sup> Meaning, the cost of disposal plus the loss of the deposit would roughly equate to the cost of recycling the C&D.

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<sup>1</sup> Report to the City Council No. 07-169, pp. 2, 3 (Oct. 19, 2007); City Mgr. Report No. 05-071, pp. 2-3 (Mar. 9, 2005). Failure to comply with state-mandated waste diversion requirements could result in potential fines of up to \$10,000 per day.

<sup>2</sup> Report to the City Council No. 07-169, p. 5 (Oct. 19, 2007); videotape of presentation by ESD staff to Natural Resources & Culture Committee, Sept. 5, 2007.

Based on its experience over the last five years, ESD proposes to amend the Ordinance to (i) revise the trigger for increasing the diversion requirement to 75 percent; and (ii) revise the list of exempt projects. It also proposes to revise the Deposit Schedule to adjust some of the amounts used to calculate the deposits and the methodology for that calculation.

## ANALYSIS

### I. PROPOSITION 26

Prop. 26 was adopted by the voters in November 2010. As of the date of this memorandum, there are only three published appellate court cases interpreting Prop. 26, none of which are on point. Essentially, Prop. 26 is a constitutional amendment which expands the revenue-raising restrictions placed on state and local governments by the constitutional amendments adopted by Propositions 13, 62, and 218.<sup>3</sup> Cases interpreting those propositions and the state statutes implementing them<sup>4</sup> are instructive in analyzing Prop. 26.

Since the enactment of Proposition 218, all “taxes” imposed by local government are either general taxes or special taxes. Cal. Const. art. XIII C, § 2(a). Special taxes are imposed for a specific purpose, as distinguished from general taxes which are imposed for general governmental purposes. Cal. Const. art. XIII C, § 1(a), (d). Because the expenditure of C&D deposits and accrued interest thereon is restricted to the refund of deposits, costs of administering the C&D Program, and specific recycling-related purposes (SDMC § 66.0610), the deposit would be analyzed in the context of a special tax.

Local governments may not “impose, extend, or increase” any special tax without a two-thirds vote of the electorate. Cal. Const. art. XIII C, § 2(d). Prop. 26 added a broad definition of “tax” to the State Constitution. *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982, 996 (2012).

A tax is “any levy, charge, or exaction of any kind imposed by a local government,” unless it falls within one of the following seven exceptions:

- (1) A fee for a benefit or privilege provided directly to the fee payer that is not provided to those not charged and that does not exceed the reasonable cost of providing the benefit or privilege;
- (2) A fee for a service or product provided directly to the fee payer that is not provided to those not charged and that does not exceed the reasonable cost of providing the service or product;

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<sup>3</sup> Prop. 26 is not retroactive. *Brooktrails Township Community Services Dist. v. Bd. of Supervisors of Mendocino County*, 2013 WL 3849633, at \*1 (Cal. App. 1 Dist. July 24, 2013).

<sup>4</sup> Proposition 218 Omnibus Implementation Act codified at Cal. Gov’t Code §§ 53750, *et seq.*

- (3) A fee for reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, audits, and administrative enforcement and adjudication;
- (4) A fee for entrance to or use of government property or the purchase, rental, or lease of property;
- (5) A fine, penalty or other monetary charge imposed by a court or a local government as a result of a violation of law;
- (6) A charge imposed as a condition of property development; and
- (7) Assessments and property-related fees imposed pursuant to proposition 218.

Cal. Const. art. XIII C, § 1(e).

For purposes of Prop. 26, a tax is “increased” if either the applicable rate used to calculate it increases or the methodology by which it is calculated is revised so as to result in an increased levy on any person. Cal. Gov’t Code § 53750(h)(1). To extend a tax means to lengthen the duration of time during which the tax is in effect. Cal. Gov’t Code § 53750(e).

## **II. AMENDMENTS TO THE C&D ORDINANCE**

The proposed amendments to the C&D Ordinance would (i) revise the trigger for increasing the diversion requirement from 50 percent to 75 percent; and (ii) revise the list of exempt projects. Specifically, in addition to the existing requirements in SDMC section 66.0606(d)(2), which must be met before the diversion rate required under the Ordinance could increase from the current 50 percent to 75 percent, the proposed amendment would add a requirement: that the qualifying recycling facility must have a minimum 1,000 ton permitted daily capacity and must have been operating at a 75% diversion rate for nine consecutive months. Further, the exemptions under section 66.0608 would be increased to exempt projects which experience has shown tend to result in minimal C&D debris.

The net result of all these revisions would be to reduce the types of projects subject to the C&D deposit and delay an increase in the diversion requirement. Thus, none of these proposed amendments would “impose, extend, or increase” “any levy, charge, or exaction of any kind imposed by a local government.” Therefore, the amendments are not subject to Prop. 26.

## **III. ADJUSTMENTS TO THE C&D DEPOSIT SCHEDULE**

The C&D Deposit Schedule contains (i) a list of types of development projects, (ii) a deposit per square foot dollar amount for each type of project, and (iii) a minimum and maximum square footage to which the deposit per square foot amount will be applied to determine the requisite deposit amount. The proposed revisions to the Deposit Schedule include adjustments to all three categories. In most instances, the adjustments will reduce the number of projects subject to the

deposit, reduce the deposit amount per square foot, or both. However, in at least three instances, projects will be subject to higher deposits either because the deposit per square foot dollar amount will increase or the square footage subject to the deposit will increase.<sup>5</sup> So, we examine the deposits to determine first if they are the type of payment that falls under Prop. 26 and, if so, whether the deposit fits within any exemption to the definition of a tax.

**A. The C&D Deposit Arguably is Outside the Scope of Prop. 26.**

Propositions 13, 218, and 26 together are all aimed at limiting government's ability to exact revenues from taxpayers without their consent. *Schmeer v. County of Los Angeles*, 213 Cal. App. 4th 1310, 1317-22 (2013) (citations omitted). Whether the charge is labeled a tax, a fee, a charge, etc., the purpose is to restrict government's ability to impose what are essentially taxes. *Brooktrails Township Community Services Dist. v. Bd. of Supervisors of Mendocino County*, 2013 WL 3849633, at \*5 n.6 (Cal. App. 1 Dist. July 24, 2013). Tax refers to a compulsory payment to government ordinarily designed to raise government revenue, rather than a charge in response to a voluntary decision to develop or seek some other government benefits. *California Farm Bureau Federation v. State Water Resources Control Board*, 51 Cal. 4th 421, 437 (2011); *Schmeer*, 213 Cal. App. 4th at 364. A tax is imposed on individuals without regard to the benefit received by the taxpayer or the burdens created by the taxpayer. *Bay Area Cellular Telephone Co. v. City of Union City*, 162 Cal. App. 4th 686, 695 (2008).

In contrast, a deposit is defined as "... something given as a pledge or security . . . ." Webster's Third New International Dictionary 605 (1971). It is "money placed with a person as earnest money or security for the performance of a contract. The money will be forfeited if the depositor fails to perform." Black's Law Dictionary 504 (9th ed. 2009). "Refundable" means capable of being . . . returned," as in the return of money. Webster's at 1910.

Courts look to the actual attributes of a revenue-producing device, as enacted, in order to determine its proper classification. *Weisblat v. City of San Diego*, 176 Cal. App. 4th 1022, 1038 (2009) (citation omitted). In this case, the City collects the refundable C&D deposit in order to ensure compliance with the C&D Ordinance. SDMC § 66.0606. The City's intent and expectation is not to keep the deposit, but to return it in full upon proof of diversion of C&D waste from landfill disposal. SDMC §§ 66.0602, 66.0604, 66.0606. Deposits are set aside and held in the Recycling Enterprise Fund pending submittal of a completed application for a refund and are returned once the requisite proof of diversion has been demonstrated. SDMC §§ 66.0606, 66.0610. So, although the deposit raises revenue, that is not its purpose.<sup>6</sup> And, the mere fact that it raises revenue does not make it a tax. *See Sinclair Paint Co. v. State Board of Equalization*, 15 Cal. 4th 866, 880 (1997) (citing *United Business Com. v. City of San Diego*, 91 Cal. App. 3d 156 (1979)).

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<sup>5</sup> The three instances are "non-residential new construction (commercial)," "non-residential demolition," and "residential alterations" over 7000 square feet.

<sup>6</sup> The use of deposit revenues which have been forfeited, plus accrued interest, are devoted to achieving recycling goals, including mitigating the impacts of development on the community and the environment. SDMC § 66.0610(b)-(e).

Further, in *Rosenman v. United States*, 323 U.S. 658, 662 (1945), superseded by statute as stated in *Ehle v. United States*, 720 F.2d 1096, 1097 (9th Cir. 1983), the Supreme Court held that a remittance of estimated tax payments is a deposit and not a payment of a tax if the money is given over to secure performance of an obligation, rather than to satisfy an already existing assessment or debt.

The Government does not consider such advances of estimated taxes as tax payments. They are, as it were, payments in escrow. They are set aside, as we have noted, in special suspense accounts established for depositing money received when no assessment is then outstanding against the taxpayer. The receipt by the Government of moneys under such an arrangement carries no more significance than would the giving of a surety bond. Money in these accounts is held not as taxes duly collected are held but as a deposit made in the nature of a cash bond for the payment of taxes thereafter found to be due.

*Id.*; see also *Ehle v. United States*, 720 F.2d 1096, 1097 (9th Cir. 1983).

That is exactly the situation here. The C&D deposit is collected to secure performance of the C&D diversion requirement. No assessment exists at the time payment is made and no requirement to pay materializes unless and until the Ordinance is violated.<sup>7</sup> So, it is arguable that the C&D deposit is not the sort of payment covered by Prop. 26.

**B. Even if Prop. 26 Applies, the C&D Deposit is Arguably Exempt as a Condition of Property Development.**

Even if the deposit is subject to Prop. 26, it may fall under one of two exceptions. First, the deposit may fall under the sixth exception for “[a] charge imposed as a condition of property development.” Cal. Const. art. XIII C, § 1(e)(6).<sup>8</sup> By its express terms, this exemption includes more than development impact fees governed by the Mitigation Fee Act in California Government Code sections 66000, *et seq.*, and encompasses any charge imposed as a condition

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<sup>7</sup> See Section III.C. of this memorandum for an analysis of why the deposit is exempt from Prop. 26 even if it is forfeited, i.e., actually assessed.

<sup>8</sup> This exemption is substantively the same as the exemption in Prop. 218 excluding from its reach existing laws relating to the imposition of fees or charges as a condition of property development. Cal. Const. art. XIII D, § 1(b).

of property development. *League of California Cities Proposition 26 Implementation Guide*, p. 42 (April 2011); City Att’y MOL 2011-3, p.10 (March 4, 2011).<sup>9</sup>

As mentioned previously, the C&D deposit amounts were established at levels City staff determined would make the cost of disposal and the cost of recycling roughly equal so that generators would choose to recycle. They are not based on recovery of costs. However, this exception does not include any cost-recovery limitation language as do some of the other exceptions. Under the rules of statutory interpretation, the inclusion of the cost recovery language in some exceptions and not others suggests cost recovery does not apply to the exception, based on the general rule that “[w]hile every word of a statute must be presumed to have been used for a purpose, it is also the case that every word excluded from a statute must be presumed to have been excluded for a purpose.” *Arden Carmichael, Inc. v. County of Sacramento*, 93 Cal. App. 4th 507, 516 (2001). Thus, this exception likely is not limited to cost recovery.

Nevertheless, regulations and fees in connection with private property development are constrained by the scope of the police power. Article XI, section 7 of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary and other ordinances not in conflict with state law. Cal. Const. art. XI, § 7. The police power includes the power to regulate the collection and disposal of refuse. *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 275 (1993) (citations omitted); *Valley Vista Services, Inc. v. City of Monterey Park*, 118 Cal. App. 4th 881, 888 (2004). It also includes the power to place restrictions on the use of property as reasonably necessary for the public safety, comfort or health. *In re Weisberg*, 215 Cal. 624, 627 (1932). While the police power is broad and flexible, its exercise must not be unreasonable, arbitrary, or capricious. *Thain v. City of Palo Alto*, 207 Cal. App. 2d 173, 187 (1962). In order to be a valid exercise of the police power, the regulation and/or fee must bear a reasonable and substantial relation to the public welfare objective it was designed to achieve. *California Building Industry Ass’n v. City of San Jose*, 216 Cal. App. 4th 1373, 1388-89 (2013); *Thain*, 207 Cal. App. 2d at 187-88.

It appears the C&D Deposit satisfies this legal standard. An individual who chooses to develop or re-develop property generates C&D debris from that activity. That debris is disposed in local landfills, such as the City’s Miramar Landfill. This places a burden on the City’s infrastructure because it uses up precious City landfill capacity. When the C&D Ordinance was enacted, about 35 percent, or about 400,000 tons per year, of the waste disposed to the Miramar Landfill

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<sup>9</sup> We do not believe the deposit would constitute a fee under the Mitigation Fee Act because under that Act a fee is defined as “a monetary exaction other than a tax or special assessment . . . that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project . . .” Cal. Gov’t Code § 66000(b) (emphasis added); *Trinity Park, L.P. v. City of Sunnyvale*, 193 Cal. App. 4th 1014, 1021 (2011) (city requirement that developer sell certain percentage of homes at below market price is not a development fee because it does not defray all or part of the cost of public facilities related to the development). “[A] fee does not become a ‘development fee’ simply because it is made in connection with a development project.” *Barratt American, Inc. v. City of Rancho Cucamonga*, 37 Cal. 4th 685, 698 (2005) (internal citations omitted).

was recyclable C&D debris. Once the Miramar Landfill closes, the costs to City taxpayers to dispose of waste is projected to rise significantly. The purpose of the C&D Deposit is to economically incentivize the recycling of C&D debris in order to keep it out of the Miramar Landfill, to save taxpayer monies, and to remain in compliance with state-mandated waste diversion requirements. It does so by requiring a fully refundable deposit on certain development calculated to roughly equalize the cost of recycling and the cost of disposal of C&D in order to drive C&D debris away from local landfills to reuse and recycling facilities.<sup>10</sup> Based on these facts, the C&D Deposit appears to be a valid exercise of the City's police power.<sup>11</sup>

**C. Even if Prop. 26 Applies, Forfeited C&D Deposits are Arguably Exempt as a Penalty for Violation of Law.**

Even if the deposit is subject to Prop. 26, forfeited deposits arguably fall under the fifth exemption for a fine, penalty or other monetary charge imposed by a court or a local government as a result of a violation of law. Cal. Const. art. XIII C, § 1(e)(5).<sup>12</sup> The violation of a city ordinance constitutes a violation of law. *Empire Fire & Marine Insurance Co. v. Bell*, 55 Cal. App. 4th 1410, 1419, 1422 (1997).

A "fine" is a "pecuniary criminal punishment or civil penalty payable to the public treasury." Black's Law Dictionary 708 (9th ed. 2009). A "penalty" is "a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party's loss)." *Id.* at 1247. A monetary charge is the price, cost, or expense that may include a delinquency charge, a finance charge, or a late charge. *Id.* at 265.

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<sup>10</sup> Historical data compiled by ESD staff show that, since its inception to the present, the C&D Ordinance in fact has contributed significantly to the diversion of C&D debris from the Miramar Landfill to reuse and recycling facilities. Email from ESD Recycling Program Manager Ken Prue to Deputy City Attorney Grace C. Lowenberg (July 16, 2013) (on file with author).

<sup>11</sup> Regulations that burden real property are also constrained by the federal and state constitutional prohibitions on the taking of property without just compensation. U.S. Const., amend. V; Cal. Const. art. I, § 19. Generally applicable development conditions that incidentally restrict a use, diminish the value, or impose a cost in connection with the property do not amount to a taking. *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 886 (1996) (ordinance requiring dedication of artwork or cash equivalent amounting to 1% of total building valuation did not constitute a taking). Because the C&D Ordinance and the deposit requirement in particular is applicable to a broad class of property owners (including the City), is not discretionary, and the deposit is fully refundable upon proof of diversion, we do not believe that a court would conclude that it constitutes a taking. This is so even if the essential nexus and rough proportionality test required by the Nollan/Dolan line of cases is applied in this instance (*Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994)). These cases require that a monetary exaction must have an essential nexus and rough proportionality to the impacts of a proposed development. *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. \_\_\_\_, 133 S. Ct. 2586, 2595, 2603 (2013). Given the purpose of the C&D deposit as described herein, the basis for that purpose, and the method for determining the deposit, we believe that even the Nollan/Dolan criteria are satisfied here.

<sup>12</sup> This exemption is consistent with a principal distinction between a tax and a penalty, namely that a tax raises revenue when it is obeyed, whereas a penalty raises revenue when some legal obligation is disobeyed. *California Taxpayers' Ass'n. v. Franchise Tax Board*, 190 Cal. App. 4th 1139, 1148 (2010) (concluding that 20 percent penalty on understated portion of corporate income tax is a penalty, not a tax under Proposition 13).

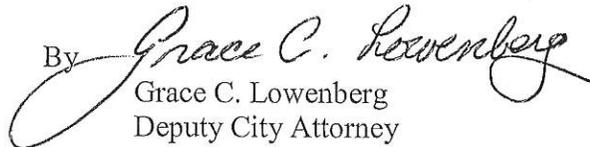
Like the sixth exemption discussed above, this exemption is not limited to cost recovery. Civil penalties are punitive in nature and are imposed to secure obedience to statutes and regulations validly adopted under the police power. They need not be proportional to actual damages sustained. *People v. Union Pacific Railroad Co.*, 141 Cal. App. 4th 1228, 1257-58 (2006); *Hale v. Morgan*, 22 Cal. 3d 388, 398 (1978). But, they may not be unreasonable or oppressive either. *Hale*, 22 Cal. 3d at 399.

In this case, the forfeiture of deposits operates as a penalty. The Ordinance contains no other enforcement mechanism, and the City takes no other enforcement action for failure to divert C&D under the Ordinance. Deposits are not refunded for one of two reasons: (i) the applicant fails to file the completed application for a refund within the designated timeframe;<sup>13</sup> or (ii) the applicant fails to recycle C&D debris in whole or in part. In either case, the applicant has failed to comply with the terms of the Ordinance. As described above, the deposit is reasonably and substantially related to the public welfare objectives the Ordinance is attempting to achieve. Further, the amount forfeited is directly proportional to the amount of C&D the applicant has failed to recycle (SDMC § 66.0606(d)), and so, does not constitute an unreasonable penalty. Thus, forfeited deposits are likely exempt from the definition of a tax under Prop. 26.

### CONCLUSION

The proposed revisions to the C&D Ordinance are outside the scope of Prop. 26 because they do not impose, extend, or increase any City levy, tax, charge, fee, or other monetary exaction. Additionally, the C&D deposit likely is outside the scope of Prop. 26 because it is not the type of monetary payment to government that is targeted by Prop. 26. Even if the deposit is subject to Prop. 26, it is arguable that it is exempt because it is a charge imposed as a condition of property development, which constitutes both a proper exercise of the police power and a legally appropriate land use regulation. Forfeited deposits likely fall under the exemption for fines and penalties. Thus, the proposed increases to C&D deposits most probably do not constitute a tax under Prop. 26.

JAN I. GOLDSMITH, CITY ATTORNEY

By   
Grace C. Lowenberg  
Deputy City Attorney

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<sup>13</sup> In order to ensure applicants recycle C&D and obtain a return of their deposit, the following steps are undertaken by City staff: applicants receive up to two letters reminding them they have paid a refundable deposit and to recycle to obtain their refund; information packets are prepared and made available for all applicants at various counters in DSD; technical assistance and information is provided to applicants via phone, email, fax, in-person, on-site meeting, or any method requested, e.g., participation in pre-construction meetings; one full time Code Officer is dedicated to providing technical assistance via site visits, calls, and emails; after passing final inspection, all applicants with deposits of \$1,000 or greater are called to inform them that they are eligible to submit their refund request and to answer any questions; at times, multiple calls are made to ensure the refundable party receives the information about the refund; ESD does presentations at conferences, workshops, businesses, and association groups; ESD maintains an interested parties email list which is used to provide periodic C&D Ordinance-related information and updates; ESD also does web and social media outreach. Email from ESD Recycling Specialist III Martha Espinola to Deputy City Attorney Grace C. Lowenberg (June 14, 2013) (on file with author).

**The City of San Diego  
Construction and Demolition Debris Diversion  
Deposit Schedule**

**A. AUTHORITY**

The Diversion Deposit Schedule for the City of San Diego Construction and Demolition Debris Diversion Deposit Program was established under the authority of the San Diego Municipal Code, Chapter 6, Article 6, Division 6. The Diversion Deposit Schedule was adopted on \_\_\_\_\_, 2013 pursuant to City Council Resolution R-\_\_\_\_\_. The definitions found in Chapter 6, Article 6, Division 6 apply to this schedule.

**B. DIVERSION DEPOSIT CRITERIA AND AMOUNTS**

Except as otherwise provided in the San Diego Municipal Code, Chapter 6, Article 6, Division 6, a refundable deposit shall be paid at the time of issuance of the Building Permit and/or Demolition/Removal Permit. Deposit amounts are based on type and size of projects as specified in Table 1. The City of San Diego may, by resolution, change these deposit amounts based on the Consumer Price Index or other indices.

**Table 1**

Building Category	Deposit/ Sq Ft	Maximum Sq Ft Subject to Deposit	Minimum Sq Ft Subject to Ordinance	Range of Deposits
Residential New Construction, Non-residential Alterations, Demolition	\$0.40	100,000	1,000	\$40,000 - \$400
Non-residential New Construction	\$0.20	50,000	1,000	\$10,000 - \$200
<b>Flat Rate</b>				
Residential Alterations *	\$1000	6,999	1,000	\$1,000

\* Residential Alterations 7,000 square feet and greater in size, and hotels are considered Non-Residential Alterations.

**C. METHOD OF PAYMENT**

Deposit payments may be made in the form of cash, cashier's check, money order, debit card, Visa or Mastercard. All payments shall be in the exact amount due. Cashier's checks and money orders shall be made payable to the "City Treasurer."

**D. REFUND TIMELINE**

The refund or notice of ineligibility for a refund shall be issued by the Environmental Services Department Director or designee within 45 business days of the date the Director receives the documentation required by the San Diego Municipal Code Section 66.0606 (a).



**City of San Diego**

# **Construction and Demolition (C&D) Debris Diversion Ordinance and Deposit Schedule Natural Resources and Culture Committee**

**November 6, 2013**

# Background

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- Prior to implementation 35%, or 586,000 tons of recyclable C&D debris disposed
- C&D Ordinance effective July 1, 2008
- Refundable deposit on building permits to create an economic incentive to recycle
  - Based on project type and size
  - Includes certain exemptions



City of San Diego



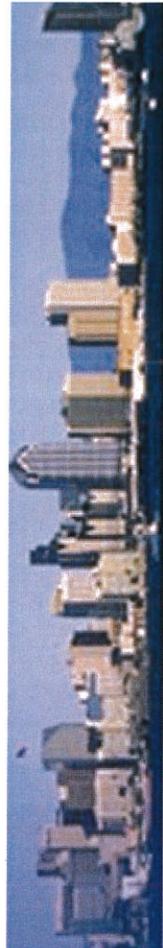
# 5 Year Summary (FY2009-2013)

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- Additional C&D recycling infrastructure in the region
  - 470,000 tons of mixed C&D recycled
- Recyclable C&D debris disposed reduced by 47% to 312,000 tons/year



City of San Diego



# 5 Year Deposits Summary

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- 12,400 permits / \$32M collected
- \$19M refunded
  - 69% avg. diversion rate for processed deposits
- Approximately \$3.7M forfeited
- Approximately \$9M active



City of San Diego



# Proposed Changes

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- More business friendly
- Clean up
- Anticipated results:
  - 32% reduction in value of deposits collected
  - 25% reduction in number of permits subject to the ordinance
- Minimal loss of diversion



City of San Diego



# Actions Requested

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- Ordinance amendment
  - Additional exemptions
  - Revision to 75% trigger language
- Revision of the Deposit schedule
  - Reducing the number of deposit types
  - Placing maximum amount on all deposit types
  - Raising the minimum sq. ft. to 1,000 sq. ft. for all projects



City of San Diego

