

DATE ISSUED: March 9, 2005 REPORT NO. 05-071

ATTENTION: Natural Resources and Culture Committee
Agenda of March 16, 2005

SUBJECT: Construction and Demolition Debris (C&D) Diversion Deposit Ordinance

REFERENCE: Manager's Report No. 94-191 (July 7, 1994)
Manager's Report No. 95-91 (April 26, 1995)
Manager's Memorandum re: CMR 95-91 (May 26, 1995)
Manager's Memorandum re: CMR 95-91 (August 2, 1995)
Manager's Report No. 96-117 (May 28, 1996)
Manager's Memorandum re: Solid Waste Management Issues (August 1, 1996)
Manager's Report No. 98-61 (March 20, 1998)
Manager's Report No. 99-160 (July 28, 1999)
Manager's Report No. 04-175 (July 28, 2004)
Manager's Report No. 04-176 (July 28, 2004)

SUMMARY

Issue - Should the City adopt a C&D Debris Diversion Deposit Ordinance to help ensure the diversion of construction and demolition debris to assist with compliance with the State of California mandated 50% diversion of solid waste from landfills and to preserve capacity thus extending the life of Miramar Landfill?

Manager's Recommendations - 1) Adopt the C&D Debris Diversion Deposit Ordinance and direct staff to implement the deposit program established by the ordinance. 2) Direct the City Manager to develop contract language for construction and demolition recycling that can be integrated into all City of San Diego (City) construction contracts. 3) Direct the City Manager to draft an Administrative Regulation to establish construction and demolition debris diversion requirements for City Departments which generate significant amounts of C&D debris.

Fiscal Impact – In Fiscal Year 2005, there will be no fiscal impact. If the program is successful, in Fiscal Year 2006, as part of an overall strategy which includes the siting of a mixed C&D facility at the Miramar Landfill, approximately 36,000 tons of material currently going to Miramar Landfill may be diverted. This could result in a loss of revenue of approximately \$252,000 to the Recycling Fund and \$782,000 to the Refuse Disposal Fund. In Fiscal Year 2007, the diverted tonnage could be approximately 180,000 tons resulting in a loss of revenue of approximately \$1.26 million to the Recycling Fund and \$3.96 million to the Refuse Disposal Fund. In Fiscal Year 2008 and subsequent years, diverted tonnage may be as much as 216,000 tons resulting in a loss of revenue of approximately \$1.51 million to the Recycling Fund and \$4.75 million to the Refuse Disposal Fund annually. These losses will be offset by the revenue received when this landfill space is eventually sold. Additionally, an increase in over a year of landfill life is expected.

BACKGROUND

The State of California “Integrated Waste Management Act” requires local governments to prepare and implement plans to achieve 50% waste reduction on and after 2000. This law, commonly referred to as AB939, can result in potential fines of up to \$10,000 per day if cities are not in compliance. The City diversion rate was at 48% in 2000, dropped to 44% in 2002, and rose to 45% for 2003. The California Integrated Waste Management Board (CIWMB) granted the City two extensions to meet the mandated diversion requirements. The first extension expired in December 2004 and the second extension expires December 31, 2005.

Since the passage of AB939 in 1989, the City of San Diego has attempted to achieve the diversion mandates through voluntary efforts. In contrast, the County of San Diego adopted a Mandatory Recycling Ordinance (MRO) in 1991 which attempted to regulate debris at the point of disposal. Similar mandatory ordinances were adopted by all cities in the County, except San Diego, Coronado and San Marcos. The MRO’s were basically landfill bans requiring designated recyclables, including industrial recyclables consisting of asphalt, concrete, dirt, land clearing brush and rock, to be separated from refuse for recycling purposes and not disposed in County landfills. However, since the sale of the County’s landfill system in 1997, the MRO at point of disposal became unenforceable.

In addition to State mandates, landfill capacity is a serious issue in San Diego County with existing regional capacity remaining only until 2016¹. Miramar Landfill is scheduled to close in approximately eight years at current operation and disposal rates. Latest waste composition data indicates that up to 65% of waste currently disposed at Miramar Landfill is recyclable. About 400,000 tons of this recyclable material is mixed C&D generated in the City and surrounding jurisdictions. The total amount of C&D generated within the City’s jurisdictional boundaries, including what is disposed in other landfills is estimated to be nearly 600,000 tons annually.

In the past eight years the City has sponsored three City Manager’s Committees to study waste issues and provide guidance on the best ways to reduce disposal and meet AB939

¹ County of San Diego Integrated Waste Management Plan Countywide Siting Element, 2004

mandates. The first committee, in 1997, focused on curbside recycling and the next two committees addressed other waste issues, including C&D. The 1998 City Manager's Committee on Waste Reduction recommended that mandates be adopted to ensure the diversion of C&D, office paper from businesses, and multi-family participation. However, upon its review of the Manager's Committee recommendations, the Natural Resources and Culture Committee (NR&CC) directed City staff to continue to increase waste diversion efforts through voluntary compliance. As an alternative, City staff worked toward increasing C&D diversion by working with the Navy to establish a successful C&D diversion program in 1999 for contractors doing business with the Navy. By 2004, the Navy was able to achieve nearly 70% diversion for C&D generated from both contracted and in-house projects using an internal mandate.

In an attempt to address the City's declining waste diversion rate and the large amount of C&D entering Miramar Landfill, a 2003 Manager's Committee was formed to review and approve a draft C&D Ordinance developed by the Environmental Services Department (ESD) and the Development Services Department (DSD), in consultation with industry stakeholders. Deciding against the Ordinance, the Committee ultimately voted to continue supporting a voluntary approach through implementation of a City Council Policy. On November 22, 2004, the Council adopted the Policy and further directed ESD to develop a C&D Diversion Ordinance modeled, in part, after the Navy Region Southwest's successful diversion program. ESD was directed to report back to the NR&CC with this draft Ordinance.

The Ordinance (Attachment 1) developed by ESD in partnership with DSD is modeled after an ordinance adopted by the City of San Jose, which has had a C&D diversion deposit program in place for the last two and a half years. That program, while it has presented some challenges, generally has been successful. The type of program adopted by San Jose has also been favorably received by the CIWMB. A summary of ESD's draft Ordinance and the program components follows.

DISCUSSION

The proposed C&D Diversion Program has four components: (1) the C&D Debris Diversion Deposit Ordinance which will apply to applicants for building permits and demolition permits, including the City if its projects require such a permit; (2) City-funded projects which do not require a building permit or demolition permit, but which are expected to generate C&D debris; (3) projects undertaken by City Departments which are expected to generate significant C&D debris; and (4) an educational and outreach effort which will ensure that all affected parties are knowledgeable about C&D recycling. Each component is discussed below.

Ordinance Implementation

The proposed C&D Debris Diversion Deposit Ordinance establishes a C&D deposit program to provide an incentive for generators of C&D to recycle or reuse debris rather than landfilling it. The concept is similar to the "California Redemption Value" deposit. In addition, it is similar to other successful C&D diversion programs in the State, such as those implemented

by San Jose, Oakland, San Mateo, San Francisco and others. Attachment 2 summarizes the C&D ordinances found in these jurisdictions.

The City will collect a refundable diversion deposit for specified construction, demolition or remodeling projects when applicants for a building permit or demolition permit submit their permit application. The deposit amount will be based on square footage and type of project, with maximum deposits for some projects. Attachment 3 identifies the proposed deposit rates. The applicant will be required to complete and submit a Waste Management Form Part I (Attachment 4) with their permit application. The form will require applicants to estimate the type and amount of waste material that will be generated as a result of the project. The deposit will be calculated by DSD staff, based on the approved deposit schedule and paid with the other fees associated with the permit application.

During the course of the project, the applicant will need to document recycling activities at facilities certified by the City. A certified facility is one that meets City standards for recovery of debris. Facilities will be certified to verify; 1) their diversion rate, and 2) to ensure they have obtained all the necessary permits and licenses necessary to legally operate their facility in California. Participation in the program by processing and reuse facilities will be on a voluntary basis. DSD will provide a list of certified facilities to applicants as they apply for permits, and the list will be available on the City's website. When possible, reuse of debris is encouraged, with the requirement that applicants provide photo and narrative documentation of their reuse efforts.

Diversion requirements will be phased in over the course of a year, beginning January 1, 2006. The Ordinance provides for a 25% diversion rate for the first six months after the ordinance takes effect, a 50% diversion rate for the next six months and a 75% diversion rate thereafter. The diversion rate increase will depend on the availability of mixed processing facilities in the City. If the City determines a requisite facility is not available, the increase in diversion rate may be postponed. If mixed processing facilities become available, the public will be notified 90 days in advance of a diversion rate increase. In order to be entitled to a diversion deposit refund, in whole or in part, the applicant will be required to submit to ESD, within 180 days of the final inspection date for the project, the properly completed Waste Management Form Part II (Attachment 4), together with documentation that satisfactorily establishes the diversion rate the applicant achieved for the project. ESD will review the documentation to determine whether the project met the applicable diversion requirement. If the diversion requirement is achieved, a refund will be approved and a check sent within 90 days of receipt of a properly submitted refund request. Refunds will be prorated on a straight scale if partial compliance is achieved. In the event that an applicant does not request a refund of the C&D deposit within 180 days of the final inspection date of the project or is entitled to a partial refund only, the deposit and/or unrefunded balance becomes the property of the City. Interest on deposits is also the property of the City. These monies will be deposited to the Recycling Fund specifically for use in furthering waste reduction efforts. Until actual experience is gained, it is difficult to estimate the total deposit revenue that may revolve through the system annually.

Certain projects and activities will be exempt from the deposit requirement. These include:

pools, decks, carports, fences, and retaining walls; projects that only require a plumbing, electrical or mechanical permit; projects generating only hazardous waste and projects with a calculated deposit of less than \$100.

Upon adoption of the Ordinance, the City will continue to work with industry representatives to educate members of the industry who will be impacted.

Since November 22, 2004, ESD has been meeting with building industry representatives for comment and feedback on the proposed Ordinance. Despite these efforts, industry representatives continue to support a voluntary approach. The Ordinance relies on economic incentives to encourage diversion goals. It uses the most efficient and effective place to introduce the goals, that is at the point of permit application. This approach is not a traditional “mandatory ordinance” relying on enforcement with stiff financial penalties and sanctions, but it is a reasonable step.

It is hoped this approach will bring the added benefit of supporting the eventual development of mixed C&D processing facilities in the region. Potential operators are more likely to invest in a facility of this type if there is a higher likelihood for a guaranteed material stream.

Requirements for City Departments and Administrative Regulation

It is recommended that ESD continue working with Engineering & Capital Projects (E&CP) to develop contract language for all City contracts that will generate recyclable waste debris. City funded projects that require building permits or demolition permits will be subject to the Ordinance. City funded projects that do not require building permits will be required to recycle C&D debris pursuant to contract provisions.

It is also recommended that the City Manager be directed to develop an Administrative Regulation that outlines diversion requirements for City departments that generate a significant amount of C&D. The Navy’s Opportunity Assessment Form will be utilized as a model for ensuring and measuring compliance.

Education and Outreach

Prior to Ordinance implementation, ESD and DSD will undertake extensive public education and outreach efforts. Educational materials, such as bulletins and handouts, will be developed and provided on ESD’s and DSD’s websites, and made available at DSD information centers, libraries, and Community Service Centers. In addition, information will be provided in industry newsletters, and staff will offer workshops and technical assistance to industry organizations.

CONCLUSION

The City’s last official waste diversion rate was 45% (Calendar Year 2003) falling short of the state mandate of 50% and representing a decline from a high of 48% in calendar year 2000. The last state-granted extension to achieve 50% waste diversion expires on December 31st of this year.

Separate from, and perhaps more important than, the required formula exercise, waste composition data indicates that 65% of the trash being buried at Miramar Landfill is recyclable. About one-third (400,000 tons) of Miramar Landfill's tonnage is mixed C&D generated in the City and surrounding jurisdictions. An estimated 600,000 tons of C&D is generated within San Diego's jurisdictional boundaries and buried in regional landfills. Miramar Landfill's currently projected closure date is 2012 and regional capacity, assuming no landfill expansions or new landfills, is projected to be exhausted in approximately 2016.

Adoption of the proposed C&D Debris Recycling Ordinance is a necessary next step toward motivating diversion of these recyclables from the waste stream. The proposed Ordinance relies solely on economic incentives rather than enforcement with heavy fines. It is anticipated that this action will extend the life of Miramar Landfill, currently the city's only municipally operated disposal facility.

ALTERNATIVES

- 1) Do not adopt the attached C&D Debris Diversion Ordinance, but continue to rely on the existing C&D Policy for voluntary waste reduction efforts.
- 3) Direct staff to develop an alternative C&D Debris Recycling Ordinance that withholds Certificates of Occupancy if diversion goals are not met and requires large penalties in lieu of achievement of diversion goals to secure Certificates of Occupancy. This alternative is not recommended as it constitutes an unnecessarily heavy handed mandate as an initial step. In addition, this approach has not been effective in cities where it has been attempted.

Respectfully submitted,

Elmer L. Heap, Jr.
Environmental Services Department Director

Approved by: Richard Mendes
Deputy City Manager

HEAP/KS/JW

Attachments: [1. C&D Debris Diversion Deposit Ordinance](#)
[2. Overview of Other Jurisdictions Programs](#)
[3. Deposit Schedule](#)