THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: October 24, 2007 REPORT NO: 07-166

ATTENTION: Council President and City Council
Agenda of October 30, 2007

SUBJECT: City Recycling Ordinance

REFERENCE: Manager's Report No. 94-191 (July 7, 1994)
Manager's Report No. 95-91 (April 26, 1995)
Manager's Report No. 96-117 (May 28, 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)
Report to the City Council No. 07-148 (September 17, 2007)

REQUESTED ACTION:

1. Adopt an ordinance amending Chapter 6, Article 6 of the San Diego Municipal Code by adding Division 7, Sections 66.0701 - 66.0718 all relating to recycling for residential facilities, commercial facilities, mixed use facilities, and special events.
2. Authorize the Mayor to establish cost recovery fees for processing applications for exemptions from the recycling requirements and for applications to become a Certified Recyclable Materials Collector, and directing that these fee be filed in the Ratebook of City Fees and Charges in the Office of the City Clerk.
3. Find that the new application filing fees described above are for the purposes of meeting operational expenses associated with implementing and enforcing the requirements of the Ordinance.

STAFF RECOMMENDATION:

Adopt the recycling ordinance as prepared by the city attorney to require recycling of recyclable materials generated by residential, commercial, and mixed use facilities, as well as at special events within the city; authorize the mayor to establish the application processing fees; and find that such fees are for the purpose of meeting operational expenses associated with implementing and enforcing the recycling ordinance.

SUMMARY:

The California Integrated Waste Management Act of 1989 (AB939) required all cities to achieve a 50% waste diversion rate from landfill disposal by 2000 and to maintain that diversion rate on an ongoing basis. While the City's calendar year (CY) 2005 diversion rate was 52%, there are

still substantial quantities of recyclable materials being unnecessarily disposed of in the region's landfills. With the Miramar Landfill expected to close in 2012 at current levels of waste disposal, the Mayor is taking action to reduce the flow of waste to landfills, increase recycling, and extend the life of the Miramar Landfill.

The Mayor recently brought forward proposed changes to the Municipal Code to trigger an ordinance passed by City Council in October 2005 to reduce the amount of construction and demolition (C&D) waste entering local landfills. The Recycling Ordinance proposed in this report addresses a different part of the waste stream, namely household and business recyclables such as paper, cardboard, glass and metal containers, and plastic bottles and jars that are entering local landfills. Waste composition studies show that over 400,000 tons of these types of recyclables are disposed from the City every year. ESD estimates that approximately 100,000 tons of waste could be diverted annually through this Recycling Ordinance, thus increasing the City's waste diversion rate by 2.5%.

Background

The Environmental Services Department (ESD) has identified increased commercial and multi-family waste reduction as an essential part of our integrated recycling program since the early 1990's. Since that time numerous recommendations have been made on how to address these waste streams. These include the Plan 2000 recommendations in 1994 to mandate recycling by 1999 and the August 1999 City Manager's Committee on Waste Reduction recommendations that the City implement an office paper landfill ban for buildings 20,000 square feet and larger, and that the City evaluate the feasibility of implementing a multi-family recycling program if funding is available.

Also in 1999, the Zero Based Management Review (ZBMR) recommended that the City implement a program for increasing commercial recycling, and on May 3, 2005, the San Diego County Grand Jury (2004-2005) released a report recommending San Diego convert to a mandatory recycling program. However, the City has continued to rely on voluntary efforts to encourage recycling and increase diversion in the business, multi-family, and single family sectors.

Discussion

While it is noteworthy to have achieved and maintained a diversion rate above 50% for 2004 and 2005, the variability in the City's past diversion rates serves as a reminder that we cannot necessarily expect the current 2% cushion to continue in future years. Based on the importance of extending the life of the Miramar Landfill, reducing greenhouse gas emissions, maintaining the required 50% diversion, and preparing for future legislation that may require greater diversion, the Mayor is proposing this Recycling Ordinance to address the waste generated by the commercial (including City buildings), multi-family, and single family sectors, as well as special events.

On August 8, 2007 the Mayor's Office hosted the first of two public stakeholder meetings to gather input on the development of a recycling program which would meet the following guiding principles:

1. Should not result in taxpayers subsidizing the recycling efforts of waste generators.
2. Needs to result in an increase in recycling.

3. Needs to consider how waste reduction and recycling efforts support the reduction of greenhouse gas emissions in the City of San Diego.
4. Should help the City of San Diego maintain its position as an innovative leader on environmental issues.
5. Should try to anticipate any future state recycling goals.
6. Must be finalized three weeks prior to the September 26, 2007 NR&CC meeting.

From the suggestions and feedback received at the August 8 meeting, ESD formulated a preliminary recycling proposal which was released on August 22. Another stakeholder meeting was held on August 29 to receive feedback on the proposed program, and a proposed Ordinance (Attachment 1) was developed.

Proposed Ordinance

The proposed Recycling Ordinance incorporates both requirements which have been successful in other jurisdictions and the input of local stakeholders. It is designed to distribute the responsibility for waste reduction and recycling to all sectors of the community including commercial, single and multi-family residential, and mixed use facilities. The multi-family and commercial requirements would be phased in over time starting with the largest facilities, so as to provide ample time for smaller facilities, which may face greater challenges, to develop workable reycling programs. Additionally, any commercial, multi-family residential or mixed use facility which generates less than six cubic yards per week of refuse would be exempt from the Ordinance, with the caveat that in the future the Mayor could reduce the six cubic yard threshold after a 90 day public notice.

Details of the proposed Ordinance follow.

I. PHASING

A. City of San Diego Curbside Recycling Customers

Effective 90 days after final passage of the Ordinance, single and multi-family residences which are provided with City of San Diego curbside recyclable waste collection services would be required to participate in the City curbside recycling program. This would require those residents who have blue bins to fully utilize them, and is expected to increase tonnage in the curbside recycling program. Customers who receive City refuse collection services but do not currently receive recycling collection from the City (approximately 40,000 customers) would be provided recycling containers as funds are available, and, upon receipt of such containers, would be required to participate in the City curbside recycling program.

B. Residential Facilities Serviced by Franchisees

Effective 90 days after final passage of the Ordinance single family residences which receive refuse collection services from City franchised haulers (City Franchisees) would be required to participate in a curbside recycling program either through the City Franchisee or a recyclable materials collector.

For multi-family residential facilities serviced by City Franchisees, the requirement would be phased in as follows:

- By the 90th day after final passage of the Ordinance, for multi-family complexes with 100 units or more;
- By January 1, 2009, for multi-family complexes with 50 units or more;
- By January 1, 2010, for multi-family complexes with less than 50 units.

For both single and multi-family residential facilities not currently serviced by City forces, the facility owner/operator/manager would be required to provide on-site recycling services at least twice a month to include collection of, at a minimum, plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers. These materials were identified because they have strong markets and will be easily recyclable for the long term. The owner/operator/manager would be required to provide recycling containers, recycling signage, and education to the occupants of their facilities. Occupants would be required to separate their recyclable waste from other solid waste and deposit their recyclable wastes in the recycling containers provided.

C. Commercial Facilities

For commercial facilities serviced by City Franchisees (including City buildings managed by the City of San Diego), the facility owner/operator/manager would be required to provide on-site recycling services as needed to include collection of, at a minimum, plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers, as well as other recyclable waste for which markets exist such as wood pallets, yard waste, and scrap metal. The owner/operator/manager would be required to provide recycling containers, recycling signage, and education to the occupants of their facilities. Occupants would be required to separate their recyclable waste from other solid waste and deposit their recyclable wastes in the recycling containers provided. This requirement would be phased in as follows:

- By the 90th day after final passage of the Ordinance, for commercial facilities of 20,000 square feet or more;
- By January 1, 2009, for commercial facilities of 10,000 square feet or more;
- By January 1, 2010, for commercial facilities under 10,000 square feet.

D. Mixed Use Facilities

Mixed use facilities would be required to comply with either the multi-family facility or commercial facility requirements depending upon the predominant use of the facility based on square footage. Mixed use facilities whose predominat use is residential would follow the multi-family residential facility requirements. Mixed use facilities whose predominant use is commercial would follow the commercial facility requirements.

E. Special Events Recycling

Effective 90 days after final passage of the Ordinance, special events requiring a permit from the City of San Diego would be required to provide recycling containers for aluminum cans, and

glass and plastic bottles and jars throughout the event venue and to ensure that all recyclables are collected and recycled. Events would be required to provide an equal number of refuse and recycling containers, placed next to each other throughout the event. Currently, applicants for special events are required to submit a recycling plan with their special event permit application. This Ordinance would expand on this requirement by providing these specific requirements for recycling activities.

F. Delivery of Recyclable Materials to Recycling Facility

Franchisees, recyclable materials collectors, and persons who self-haul the recyclable wastes they generate, all must deliver the recyclables they collect to a recycling facility. That facility may be located at a landfill. But, the Ordinance would prohibit the delivery of recyclable materials to a landfill for disposal.

II. REPORTING

A. Annual Reports

City Franchisees and certified recyclable materials collectors (as defined below) providing collection services to residential facilities, commercial facilities, City buildings and mixed use facilities, would be required to submit an annual report to the City to include: name and address of each facility served, responsible person at each facility, volume of refuse and recyclables service provided and frequency of collection. They would also be required to provide the total tonnage of recyclable materials collected within the City and the names of the recycling facilities to which the recyclable materials were delivered for recycling.

All residential and commercial facilities would retain the right to self-haul their refuse and recyclable materials. Facilities, including single-family developments whose solid waste is managed by an association, which self haul their recyclables or utilize a recycling collection company that is not certified by the City, would be required to report on their own behalf. Single-family homes whose solid waste is not managed by an association would not be required to provide any reports.

Confidential or proprietary information, submitted by a City Franchisee or recyclable materials collector pursuant to the Recycling Ordinance, which is clearly marked as confidential or proprietary, will be protected and treated with confidentiality to the extent permitted by law. Otherwise, the information shall be considered a public record. If such information becomes the subject of a public records request, the City will make every effort to notify the Franchisee or Recyclable Materials Collector of the request in a timely manner. It will be the Franchisee's or Recyclable Materials Collector's obligation to defend at its expense any legal challenges seeking to obtain such information.

B. Certified Recyclable Materials Collectors

For the purposes of simplifying reporting requirements for the property owners and managers and informing the public of what companies are available to provide recycling services, the City proposes to certify recyclable materials collectors who meet minimum standards set by the City.

Certification would not be required, but would be encouraged. Certified recyclable materials collectors would be listed on the ESD website and in educational materials published by the City.

Applicants would need to provide at a minimum: name, address and phone number of the recyclable materials collector; description of recycling vehicles used; location where recycling vehicles are stored and maintained; indemnity; and proof of insurance. The applicant also will be required to comply with certain requirements such as: clearly labelling all recycling receptacles with the collector's name, phone number, and the recyclable materials accepted in the bin; providing clean, leak-proof, and rodent-proof recycling containers with tight fitting lids; keeping their recycling vehicles clean and well-maintained; and obtaining all required permits, licenses, registrations, etc. Applicants would be required to pay a cost recovery non-refundable application fee of $130, and certifications would be required to be renewed every two years.

III. EXEMPTIONS

Multi-family residential facilities, commercial facilities, and mixed use facilities which generate six cubic yards or less per week of refuse would be exempt from the Ordinance. Based on information accessed by ESD staff from Costar real estate database and survey information, this exemption would result in most multi-family complexes with 25-30 units or less being exempt from this Ordinance and would equate to approximately 3,000 complexes or about 40,000 multi-family units. ESD provides multi-family recycling services to about 18,000 multi-family customers and so it is likely that many of the complexes that are exempt are already receiving City-provided recycling services. Private haulers have indicated that approximately 30-40% of all their customers (multi-family and businesses combined) receive six cubic yards or less of refuse services.

The Mayor would have discretion to reduce the six cubic yard threshold after 90 days public notice.

In addition to the six cubic yard exemption, at the discretion of the Director's designee, and after payment of a cost recovery adminstrative fee of $130, temporary exemptions of one year may be granted to any facility based on lack of available markets for recyclable waste, lack of available space for recycling bins, alternative recycling efforts, and the amount and type of solid waste or recyclable waste generated. Acceptance or denial of these exemptions will be notified in writing and will be appealable to the ESD Director.

IV. EDUCATION AND ENFORCEMENT

The initial emphasis for enforcement of this Ordinance would focus on the provision of educational materials and recycling containers by the owner/operator/manager. While ESD would provide downloadable signage and educational materials on its website, facility owners/operators/managers would be responsible for making sure that internal recycling collection containers have appropriate signage and residents/tenants are informed about the program annually, upon move-in, and when there is any change in the program. Waste haulers and recyclable materials collectors would be required to provide signage on all recycling containers which they service.

Additionally, ESD would monitor the reports provided by franchised waste haulers and certified recyclable materials collectors to determine what facilities are not complying with the Ordinance. While education would be the initial focus of enforcement, compliance is the goal and potential penalties would be the same as those applicable to violations of other Municipal Code provisions as provided in the City's municipal code.

Conclusion

While significant diversion has resulted from voluntary efforts to increase waste diversion in the commercial, multi-family, and single family sectors, many recyclables are still thrown away. The proposed Ordinance is needed to increase waste diversion in these sectors and has been drafted to meet the necessary waste diversion goals while being as easy as possible to implement for the facilities being affected.

FISCAL CONSIDERATIONS:

Fiscal Impact

ESD's Business Process Reengineering (BPR) efforts resulted in an annual estimated savings of $3M in the Recycling Fund and Refuse Disposal Fund, exclusive of the Collection Services Division. While this process resulted in increased efficiency in ESD, new programs such as this Recycling Ordinance, require a reassessment of the staffing needs and revenues to maintain an appropriate level of solid waste system financing.

To manage the administrative, educational, and enforcement aspects of the Recycling Ordinance, ESD would be required to hire 3.50 full time equivalents (FTEs) including two Recycling Specialist IIs, one Code Compliance Officer and 0.50 Administrative Aide II. The two Recycling Specialists would manage the certification of recyclables collectors, the educational aspects of the Ordinance, exemption processing, and technical assistance to facilities setting up or improving their recycling programs. The one Code Compliance Officer would inspect both residential and commercial facilities to verify compliance with the Ordinance as well as respond to complaints about non-compliance. The 0.50 Administrative Aide would assist with administrative duties related to the Ordinance. The cost associated with these positions is estimated to be $300,000 annually, and staff would be hired in April 2008.

Other costs to ESD would include the need for additional recycling collection trucks, blue recycling containers, and drivers in the Collection Services Division to handle the increased recycling tonnage from customers already serviced by ESD. Costs for these expenditures are difficult to quantify because they will depend on the level of participation by single family customers, but estimates range from $500,000 to $2.5M annually. Additionally, customers who have declined service in the past may request a recycling container. These customers would be added to a list and added to the program as revenues became available.

Costs to City facilities to comply with the Ordinance are difficult to precisely quantify. Generally, two cost categories exist for these facilities: custodial, and refuse and recycling collection costs. From consultations with City facilities managers, past experiences in City buildings and current practices in the private sector, it is estimated that adding recycling programs would not increase custodial costs. From consultations with local custodial companies, it has been determined that recycling programs are most cost-effective if facilities utilize a

recycling program in which staff empty their own desk-side recycling bins into centrally located bins (for example next to a copier machine) that are then emptied by the custodial staff. Most City facility recycling programs operate in this manner as do many private sector recycling programs. Since increased staff time for the custodians would be negligible, custodial costs to add recycling programs would also be negligible.

Overall, refuse and recycling collection costs for all facilities would likely increase initially and level off or even decrease after the first year. An initial expenditure would be required to purchase both desk-side and centrally located recycling bins. Additionally, recycling collection containers (dumpsters in most instances) would need to be sited and collected by a designated recyclables collector. However, since dumpster pick-ups for recycling containers are generally one-half to two thirds (1/2 -2/3) of the cost of refuse pick-ups, once appropriate service levels are established for recycling and refuse service, fewer refuse pick-ups would be needed. This would result in total costs being equal to or less than the costs for refuse collection only.

When fully implemented (FY 2011) this program is expected to divert 100,000 tons of material from being disposed in regional landfills, including 70,000 tons of material expected to be diverted from Miramar Landfill. At that time, the diversion is anticipated to result in an annual fiscal impact to the City of $4.4M, consisting of $700,000 in increased costs and lost revenues to the General Fund, $2M in increased costs and lost revenues to the Recycling Fund and $1.7M in deferred Refuse Disposal Fund revenues. See Attachment 2 for a summary of the fiscal impacts of this Ordinance to the City by fiscal year expressed as ranges. FY 2008, 2009 and 2010 fiscal impacts increase from year to year because of the increasing estimated diverted tonnage in conjunction with the phasing in of the Ordinance requirements.

Given that recycling and refuse collection services are provided in a competitive market in San Diego, costs to commercial and multi-family facilities would range from an overall cost savings to, in some cases, an increase in costs. As described for City facilities, there are two aspects to the overall cost: the custodial services and the refuse and recycling collection costs. The same discussion above regarding the nexus between custodial service costs and program design would apply for all commercial buildings, regardless of size. Surveys by ESD staff of charges for recycling in commercial and multifamily facilities show a wide range. Typically, most commercial buildings can expect to receive recycling at no additional cost if they receive more than six cubic yards of refuse collection service per week if the standard dumpsters are used and the site is easily accessible. If the site footprint is very constrained and containers similar to those used in the City's recycling program are used, costs will likely be higher in many cases. Surveys indicate that the same cost dynamic seen for commercial buildings applies to multifamily complexes that receive nine to twelve cubic yards of refuse service. Large complexes should see cost savings and smaller complexes that add recycling might in some cases see an increase in costs.

Fiscal Mitigation

There will be minimal fiscal impact to the General Fund for FY 2008 and the estimated FY 2009 impact is $340,000. The FY 2008 and FY 2009 fiscal impacts to the Refuse Disposal and Recycling Enterprise Funds will be absorbed within currently appropriated funds, except for additional personnel expenses, which will be partially offset by cost recovery fees charged for exemptions and certification applications. The Department will bring forward recommended

mitigation options in mid FY 2009 for FY 2010 and beyond after assessing the success and needs of the City's Recycling Ordinance.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Requiring recycling in the multi-family and commercial sectors had been discussed at the NR&CC in 1999. In 2004, mandatory recycling was discussed in an informational report (04-175) to the NR&CC. In June and July of 2007, reports on mandatory recycling were presented to the NR&CC by the City Attorney's Office.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community participation and public outreach efforts on the topics of multi-family and commercial recycling has been extensive and ongoing since the early 1990's. ESD has undertaken both formal and informal programs including Plan 2000, the City Manager's Committee on Waste Reduction and targeted outreach and technical assistance to different community sectors including office buildings, hotels, restaurants and multi-family complexes.

As mentioned in the Discussion section of this report, two public stakeholder meetings were held on August 8 and August 29, 2007 with the purpose of involving the community stakeholders in the development of this Ordinance. Additionally, staff have met and consulted with any stakeholder providing feedback or asking questions.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders associated with this item include the City's Non-Exclusive Franchised Solid Waste Haulers, San Diego County Disposal Association, San Diego Regional Chamber of Commerce, Building Owners and Manager's Association of San Diego, San Diego County Taxpayers Association, San Diego Food and Beverage Association, San Diego County Apartment Association, California Restaurant Association, California Resource Recovery Association, San Diego County Integrated Waste Management Citizens Advisory Committee, Sierra Club, San Diego EarthWorks, recyclers and individual residents. The implementation of the Ordinance would extend the life of the Miramar Landfill and assist the City in maintaining AB 939 waste diversion mandates.

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Attachments: 1. Proposed Recycling Ordinance
2. Fiscal Impacts of proposed Recycling Ordinance