THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: October 19, 2007 REPORT NO: 07-169

ATTENTION: Natural Resources and Culture Committee
Agenda of October 24, 2007

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

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. 99-208 (October 27, 1999)
Manager's Report No. 04-175 (July 28, 2004)
Manager's Report No. 04-176 (July 28, 2004)
Manager's Report No. 05-071 (March 9, 2005)
Manager's Report No. 05-205 (October 7, 2005)
Manager's Report No. 05-222 (November 23, 2005)
Report to the City Council No. 07-140 (August 31, 2007)
City Attorney's Report to Mayor & Council (June 13, 2005)

REQUESTED ACTION:

1. Adopt the amended Ordinance revising Chapter 6, Article 6 of the San Diego Municipal Code by amending 66.0601, 66.0602, 66.0604, 66.0606, 66.0607, and 66.0608 all relating to the diversion of construction and demolition debris from landfill disposal.
2. Approve the revised deposit schedule for the City's Construction and Demolition Debris Diversion Program.

STAFF RECOMMENDATION:

Approve the requested actions and forward to the full City Council for approval.

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. Waste composition studies show that C&D was approximately 20% of the disposed waste stream in 1992, and increased to 31% in 1997 and 35% in 2000. The City's overall annual disposal tonnage in CY 2006 was approximately 250,000 tons higher than the tonnage studied in the 1999/2000 waste composition study, and the Miramar Landfill tonnage reporting system shows that approximately 400,000 tons of C&D debris are disposed there annually.

The City Mananger's Committee on C&D Material Recycling considered a C&D ordinance in 2003. The goals of the Ordinance were to assist the City in increasing its AB939 waste diversion rate and to extend the life of Miramar Landfill. The Committee recommended continuing with a voluntary policy initially, only enacting a C&D recycling ordinance if the voluntary policy was not successful. The City Council established a voluntary C&D Policy in November 2004. The subsequent lack of results led to the adoption of a C&D Ordinance in October 2005, which would become effective 45 days after a certified mixed C&D recycling facility is operating within the City. To date there is no mixed C&D facility operating in the City and the Ordinance has not become effective.

Miramar Landfill C&D Facility

Even though there already was a strong source separated recyclables processing infrastructure in the region, a mixed C&D recycling infrastructure was needed to ensure that additional waste diversion would occur. The City issued a Request for Proposal (RFP) in November 2004 to develop a mixed C&D recycling facility at the Miramar Landfill. A Notification of Intent to Award was issued in August 2005, and the Environmental Services Department (ESD) planned for the Miramar Landfill facility to open in summer/fall 2006. The response to the RFP resulted in a need for ESD to subsidize the facility so that the cost to landfill users would be the same for mixed C&D recycling and refuse disposal. This subsidy would have been in addition to the fiscal impacts which also apply to the implementation of the C&D Ordinance as noted in the Fiscal Considerations section of this report. The subsidy was proposed to consist of both one-time upfront costs and ongoing operating expenses. The upfront costs of approximately $1.2M would have included providing a scale for contractor use to weigh outbound loads, providing the infrastructure for water and electricity service to the C&D facility site, other related improvements and expenses, and improvements to and expansion of the Miramar Greenery. The ongoing subsidies associated with the operation of the City facility would have had a fiscal impact of $3.2M per year, and would have included the following:

- $2.7M lost revenue and increased costs to the Refuse Disposal Enterprise Fund:
  - $1.7M in lost revenue for disposal of residue from the C&D facility at no charge.
  - $1M in increased Miramar Greenery operating costs for processing of clean green waste, clean wood, and clean drywall from the C&D facility at no charge.
- $500,000 increased costs to the Recycling Enterprise Fund:
  - $200,000 increased costs for energy, permits, and scale related costs.

- $300,000 payment to vendor (subsidy above the $24/ton tipping fee received at Miramar Landfill Fee Booth).
- The subsidy would also increase by approximately $200,000 per year due to increased costs such as CPI increases.

The award of the contract and subsequently the facility's opening date were delayed due to the significant adverse fiscal impacts on ESD fund balances. In the meantime, the private sector started to respond to this market opportunity by developing local mixed C&D infrastructure. For example, the SANCO (EDCO) facility in Lemon Grove opened in January 2007, and two additional mixed C&D recycling facilities are proposed to be developed in the near future.

The SANCO facility is located approximately eight miles from downtown San Diego, just outside the City's boundary with the City of Lemon Grove, and is easily accessed from State Route 94. While not equidistant to all parts of the City, it is closer to downtown (where much of the development/redevelopment is occuring) than the proposed City facility at the Miramar Landfill. The SANCO operator estimates that approximately 80% of the facility's capacity could serve the City of San Diego. If fully utilized, this is equal to the expected diversion from the City's proposed facility and could increase the City's overall waste diversion rate by up to 4% - 5%. In addition, San Diego Landfill Systems (Allied Waste Services) is working to site mixed C&D facilities at both the Otay and Sycamore Landfills. Since the combination of a strong regional source separated recycling infrastructure and the SANCO facility will provide ample capacity and opportunity to divert C&D materials generated in San Diego, there is no need for the City to subsidize the construction and operation of a C&D facility at the Miramar Landfill.

C&D Ordinance

The need for the existing C&D ordinance remains due to the fact that the current cost of landfill disposal is less than the cost of recycling mixed C&D material. The Ordinance creates an economic incentive to recycle through the collection of refundable deposits. The City will collect a refundable diversion deposit for specified building construction, demolition or remodeling projects when a building permit or demolition/removal permit is issued. 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 below the established threshold. Last year the Development Services Department (DSD) issued 5,000 permits that would have been subject to paying a deposit if the Ordinance had been in effect. The deposit amount will be based on square footage and type of project, with maximum deposits for some larger projects. The applicant will be required to complete and submit a Waste Management Form Part I (Attachment (1)) 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 at the time it is issued.

During the course of the project, the applicant will need to document project C&D debris recycled at recycling facilities certified by the City, onsite reuse of C&D debris and/or other donations or reuse of C&D debris. A certified facility is one that meets City standards for recovery of debris. Criteria for certifying facilities will include criteria for: 1) determining the

facility's diversion rate, and 2) verifying that the facility has obtained all applicable permits and licenses necessary to legally operate their facility in California. DSD will provide a list of certified facilities to applicants when they apply for permits, and the list will be available on the City's website. Reuse of debris is encouraged, with the requirement that applicants provide photo and narrative documentation of their reuse efforts to justify the refund of their diversion deposit.

The diversion deposits will be collected starting on or after July 1, 2008. To be eligible for 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 (1)), together with documentation that 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. 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 only to a partial refund, then the non-refunded balance will be retained by the City. Interest on deposits will also become the property of the City. Non-refunded deposits and interest earned on deposits will be deposited into the Recycling Sub-Fund specifically for use in furthering waste reduction and diversion efforts, and will offset administrative costs of the C&D diversion program established by the Ordinance. Due to the unknown rate of defaults of deposits, it is difficult to estimate the total deposit revenue that may be generated by the Ordinance annually.

Proposed Amendments to C&D Ordinance

Without the subsidized facility at the Miramar Landfill or another facility within the City of San Diego, the current C&D Ordinance will need to be modified to become effective. The four proposed modifications to the C&D Ordinance are listed below and the proposed Ordinance to amend the Municipal Code to include the C&D modifications is included as Attachment (2):

1. The requirement that a certified recycling facility which accepts mixed C&D must be operating within the City will be replaced by a requirement that a certified recycling facility must be operating within 25 miles of downtown San Diego. The collection of diversion deposits will begin on or after July 1, 2008. This will allow private sector facilities located outside the City limit to trigger the Ordinance, and will provide for an educational period prior to the collection of the diversion deposits. The diversion requirement for those applying for building permits or demolition/removal permits would be 50% until December 31, 2008. For those permits issued on or after January 1, 2009, the diversion rate would be 75%, provided that a certified recycling facility which accepts mixed C&D debris is operating within 25 miles of downtown San Diego at a 75% diversion rate as of that date. If such a facility is not in operation on January 1, 2009, the diversion rate would remain at 50% for all permits issued until 30 days after the City has notified the public that such a facility is available, after that time the diversion rate for all permits issued would increase to 75%. ESD plans to develop its certification regulations with the goal to certify facilities no later than January 31, 2008. See Attachment (3) for the proposed timeline.
2. Any appeals to the proposed C&D facility certification regulations will be to the Mayor or designee instead of City Council. This would result in a timely and efficient process to handle administrative changes with better utilization of staff resources.

3. Diversion deposits will be paid at the time the building permits or demolition/removal permits are issued instead of at the time of permit application. This will ensure that deposits are not collected any earlier than necessary. In addition, this prevents many applicants who submit permit applications, but never actually obtain permits, from being subjected to the deposit and having to request refunds.
4. The program exemption for minimum diversion deposits would be changed from $100 to $200 to keep the list of exemptions consistent with proposed increases to the deposit schedule. Attachment (4) shows the schedule of the current and proposed deposit amounts.

In addition to the proposed Ordinance modifications, the City Council will be requested to adopt a resolution revising the deposit schedule to increase the deposit amounts to a level that provides an economic incentive to recycle. The existing deposit amounts were based on the assumption that the cost of mixed C&D recycling would be the same as landfill disposal. That assumption is no longer valid given that the City is not subsidizing a C&D facility. Without a City-subsidized processing facility at the Miramar Landfill, the deposits will need to be increased to ensure there is sufficient incentive for recycling C&D waste. If deposit amounts are not increased, many people would simply forfeit their deposit and consider their lost deposit a cost of doing business.

Additionally, the deposit schedule is requested to be revised to allow for 45 working days instead of 30 working days to refund deposits after full and complete refund applications are received. ESD originally requested 90 working days to process refunds, but the City Council amended it to 30 working days. In consultation with the Auditor's Office it has been determined that 45 working days is a more prudent time frame to allow for the proper processing of the refunds.

Mitigation of Fiscal Impacts

The City Council will also be requested to adopt resolutions as appropriate to mitigate the fiscal impacts of the Ordinance as discussed in the Fiscal Considerations section.

Conclusion

The Mayor supports bringing forward these amendments to the C&D recycling ordinance which would be triggered by a private sector C&D certified recycling facility operating within 25 miles of downtown San Diego at a minimum 50% diversion rate. The Department would like to bring this ordinance to Council in November 2007 with collection of deposits to begin on or after July 1, 2008. With the private sector's C&D recycling infrastructure, a facility at Miramar Landfill is no longer needed at this time. Not proceeding with a facility at the Miramar Landfill would also ensure that the users of the Miramar Landfill do not have to subsidize the cost of developing or operating the facility. The delay in requiring deposits will provide time for a comprehensive education and outreach effort while ESD and DSD develop the information technology to support the deposit process.

FISCAL CONSIDERATIONS:

Fiscal Impact

The Environmental Services Department Business Process Reengineering (BPR) was approved by City Council in February 2007. The Department's BPR study comprehensively assessed the Department's operations. As a result, the Department streamlined and improved its operations, resulting in estimated annual savings of $3M exclusive of the Collection Services Division.

Even though the BPR effort enhanced the Department's efficiency and effectiveness, its focus was on current operations. New programs that come online that would impose significant increases in expenditures and/or reductions in revenues must be addressed at the time the programs are approved and implemented in order to maintain an appropriate level of solid waste system financing.

Any additional fiscal impacts to the Department's Enterprise Funds require the Department to balance the impacts through either an infusion of revenues or a reduction in services. Certain disposal fees have not been increased in 15 years and are significantly below the full cost-recovery amount. In addition, years ago the City undertook payment of certain operational charges which previously had been the responsibility of customers. ESD recommends increasing certain disposal fees to bring them closer to the cost recovery amount and shifting back to customers the responsibility for certain operational costs to offset the financial impacts of the Ordinance.

The total FY 2008 fiscal impact of this ordinance is estimated to be $200,000, all of which will be in the Recycling Enterprise Fund. These are education and outreach costs for the Ordinance, staffing costs, and information technology costs for modifying DSD's permitting system to incorporate the deposit process.

The total FY 2009 fiscal impact is estimated to be $4.1M, and is broken down by fund as follows: $3.1M in reduced Refuse Disposal Fund revenues associated with C&D tonnage diverted from Miramar Landfill; $600,000 in reduced Recycling Fund revenues associated with C&D tonnage diverted from Miramar Landfill and costs for a proposed staffing increase of 3.50 FTE to implement the Ordinance; $300,000 in increased costs and reduced revenues in the General Fund associated with recycling C&D tonnage; and $100,000 in increased costs to other City enterprise fund departments for recycling C&D tonnage.

The total estimated fiscal impact for FY 2010 and annually thereafter is $8M, and is broken down by fund as follows: $7M in reduced Refuse Disposal Fund revenues associated with C&D tonnage diverted from Miramar Landfill; $600,000 in reduced Recycling Fund revenues associated with C&D tonnage diverted from Miramar Landfill and ongoing costs for the aforementioned proposed 3.50 FTE; $300,000 in increased costs and reduced revenues in the General Fund associated with recycling C&D tonnage; and $100,000 in increased costs to other City enterprise fund departments for recycling C&D tonnage. See Attachment (5) for the fiscal impact summary.

Fiscal Mitigation

Two mitigation options are recommended to address the FY 2008 and FY 2009 fiscal impacts to the General Fund, Recycling Enterprise Fund, and Refuse Disposal Enterprise Fund from triggering the Ordinance. These options are (1) increasing the flat rate (self haul vehicles) disposal fees at Miramar Landfill and (2) implementing a revision to the refuse container fee regulations to require customers to furnish their own container, after the first one, either by purchasing subsequent approved containers from the City or from commercially available sources. These proposed mitigation measures are introduced below, and described in detail in two separate Reports to the City Council.

If the mitigation measures are approved and become effective as of January 1, 2008 they will mitigate most of the Ordinance's estimated fiscal impacts to all three funds in FY 2008 and FY 2009. If the fiscal impact exceeds the mitigation revenues, fund balances will be used to make up the difference. As necessary, the Department will bring forward additional fiscal recommendations for FY 2010 and beyond after it has had an opportunity to analyze the initial success and fiscal impacts of the Ordinance. These fiscal impacts are estimated based on changes in waste disposed and assume optimal diversion of the C&D waste stream.

Flat Rate Fees – Self Haul Vehicles

Flat rate fees are currently assessed on self haul vehicles bringing waste to the Miramar Landfill. The majority of these transactions are with pickup trucks, passenger vehicles, SUVs, etc. These fees have not been increased since the early 1990s and are below full cost recovery. The purchasing power of the revenue from these fees has decreased significantly since that time. The below cost fees have encouraged citizens and businesses from outside the City limits to come to Miramar Landfill, which is filling up with non-City generated waste more rapidly than it otherwise would. In addition, many landfill customers, instead of bringing waste to the closest facility, travel further to bring the material to Miramar to take advantage of the below-market rates causing additional wear and tear on City infrastructure as well as increased fuel consumption, leading to increased greenhouse gas emissions.

The proposed flat rate fee increases will be implemented in two steps over two years, with the first increase effective January 1, 2008.

Fees will change for many vehicle types with the most common being pick-up trucks. For example, the current fee for a City resident coming into Miramar Landfill in a pick-up truck is $12. Other local landfills charge $30 for pick-ups. Starting January 1, 2008, ESD is proposing a City resident in a pick-up truck pay $21 and beginning January 1, 2009, $30.

Adjustment of Current Fee for Refuse Container Replacement

Currently, the City provides one refuse container to all new customers at no charge. The City also does not currently charge administrative fees nor repair costs for handling City-issued containers. This has been the City's practice since the implementation of the automated refuse collection system in 1996 and would change with this proposal, which modifies the existing container fee schedule to recover these costs for the replacement of the initial trash container provided to City refuse customers. This proposal contemplates returning individual responsibility for refuse containers (after the first container) to customers, where it had resided for nearly 75 years before the City's conversion to automated refuse collection.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Issues related to the need to divert additional C&D tonnage from the landfill and the Ordinance have previously been discussed before City Council, including a September 19, 2005 City Council meeting discussion on the C&D ordinance, and other City Council and Natural Resources and Culture Committee meetings related to a draft C&D ordinance, the City Council Policy on C&D Recycling, the Ordinance, and the proposed C&D facility.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The concept of a C&D recycling ordinance was first publicly discussed during the City Manager's Committee on Construction and Demolition Material Recycling, which convened from August – October 2003. The purpose of this committee was to develop a C&D recycling ordinance. There was additional community participation and outreach associated with the City Council Policy that was developed as a result of the City Manager's Committee, and the C&D Ordinance that was developed and adopted at a later date. Efforts included outreach to, and meetings with, stakeholders, and related presentations given to the NR&CC and City Council.

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, Building Industry Association of San Diego County, Associated General Contractors of America, San Diego Regional Chamber of Commerce, San Diego County Taxpayers Association, US Green Building Council, California Resource Recovery Association, San Diego County Integrated Waste Management Citizens Advisory Committee, Sierra Club, Audubon Society, Solana Center for Environmental Innovation, and individual residents who support recycling and waste diversion. The implementation of the Ordinance will extend the life of the Miramar Landfill and assist the City in maintaining AB 939 waste diversion mandates.

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Attachments:
1. Waste Management Form Parts I and II
2. C&D Debris Diversion Deposit Ordinance Revisions
3. Implementation and Fiscal Impacts Timeline
4. Proposed C&D Ordinance Deposits
5. Fiscal Impacts Summary