

Agenda Report

October 28, 2013

TO: Honorable Mayor and City Council

THROUGH: Municipal Services Committee (07/23/2013)

FROM: Public Works Department

SUBJECT: AMENDMENT TO CHAPTER 8.62 OF PASADENA MUNICIPAL CODE, CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT ORDINANCE, TO REFLECT CHANGES IN STATE REQUIREMENTS AND CITY GOALS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed amendment to the Construction and Demolition Waste Management Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061 (b) 3 (General Rule);
2. Approve the proposed changes to the Construction and Demolition (C&D) Waste Management Ordinance to comply with new State requirements and to update the ordinance; and
3. Direct the City Attorney to draft an ordinance amendment within 90 days consistent with the provisions set forth herein.

MUNICIPAL SERVICES COMMITTEE RECOMMENDATION:

On July 23, 2013, the Municipal Services Committee (MSC) was presented with the proposed amendment to the C&D Ordinance to comply with the requirements of the 2013 California Green Building Standards Code which go into effect on January 1, 2014. On order of the Chair, and by consensus of the Committee, the information was received and filed.

EXECUTIVE SUMMARY:

Recent changes to the California Green Building Standards Code (CALGreen), administered by the California Building Standards Commission, which go into effect January 1, 2014, make it necessary for the City to revise its C&D Ordinance. Requisite changes include lowering the square footage thresholds for applicable construction and demolition projects and expanding the scope of the ordinance to include residential remodeling projects. Also, to support the 75% waste diversion initiative of the State's AB 341 as well as the City's Zero Waste Goals, the waste diversion requirement needs to be raised to 75%. Other procedural changes are needed to update the ordinance. These changes include: correcting omissions from the original ordinance; clarifying definitions and requirements; making deadlines stated in the ordinance more practical; and providing for the development of administrative rules and regulations.

BACKGROUND:

In December 2002, the City Council adopted the C&D Ordinance (Chapter 8.62 of the Pasadena Municipal Code). The C&D Ordinance was a critical component of Pasadena's initial Plan of Correction to meet the State's 50% waste diversion mandate by 2000 required by AB 939. (The City was granted a time extension that expired on December 31, 2003.) The City's most current (CY 2012) diversion rate was 74%.

The C&D ordinance applies to certain construction and demolition projects, including new structures, demolitions, and residential additions of 1,000 square feet or more, tenant improvements of 3,000 square feet or more, and competitively bid City projects. Prior to building permit issuance, the applicant must submit a waste management plan to the Department of Public Works detailing how at least 50% of project waste will be diverted from landfilling. The applicant must also pay a non-refundable administrative review fee based on the project type and a refundable performance security deposit equal to 3% of the project valuation. On a monthly basis and at project completion, the applicant is required to submit a report documenting waste management activities, including weight tickets from receiving facilities. The performance security deposit is refunded upon staff's approval of the applicant's final report demonstrating a minimum of 50% diversion of total project waste.

New state requirements necessitate changes to the applicable project thresholds specified by the ordinance. Further to support the 75% waste diversion initiative of the State's AB 341 and the City's Zero Waste goals, the Department of Public Works recommends the project waste diversion requirement be increased to 75%. Finally, since the ordinance has not been revised since its adoption in 2002, a general update is needed to clarify program requirements, increase the program's effectiveness, and streamline ordinance administration.

Necessary ordinance changes to comply with State requirements include:

- A. Adjust covered project parameters to comply with State requirements.** Recent changes to the California Green Building Standards Code (CALGreen), which become effective on January 1, 2014, require lower square footage thresholds for applicable projects. New structures will have a threshold of 120 square feet and tenant improvements will have a threshold of 1,000 square feet. All demolitions and residential additions, regardless of size, will be covered projects. Also, a new category of projects, residential alterations and remodels, will be added and all of these projects, regardless of size, will be covered. The covered project changes needed to comply with these State requirements are summarized in Attachment A.
- B. Add residential alterations/remodels to the General Fee Schedule.** The new covered project category of residential alterations and remodels will require its inclusion in the General Fee Schedule. This will allow staff to charge administrative review fees and performance security deposits. It is anticipated that residential remodels and residential additions will require a similar level of administration. Therefore, the administrative review fee for residential alterations and remodels should be the same as that for residential additions and, likewise, the performance security deposit should be set at 3% of project valuation, up to a maximum of \$30,000.

Staff recommended ordinance changes include:

- C. Add demolitions to the General Fee Schedule.** It is also necessary to add the demolition project category to the General Fee Schedule. Although demolitions were included as covered projects in the original ordinance, they were not added to the General Fee Schedule. It is recommended that the administrative review fee be the same as that for residential additions and tenant improvements, since the level of administration required will be similar. Demolition-only projects have no project valuation and the "3% of project valuation" formula for determining the performance security deposit is not applicable. It is recommended that the performance security deposit for demolitions be set at \$1 per square foot, up to a maximum of \$30,000, which will result in deposits that are scaled to project size, as they are for all other types of projects.

Recommended additions to the General Fee Schedule are summarized in Attachment B.

- D. Raise the waste diversion requirement to 75%.** To support the State's 75% waste diversion initiative specified in AB 341 and the City's goal of achieving zero waste to landfills by 2040, the waste diversion requirement for covered projects should be raised from the current 50% to 75%. The higher diversion rate is easily achievable, since the majority of C&D waste in Pasadena is transported by franchise haulers that currently have a 75% C&D waste diversion requirement. Haulers not meeting the 75% C&D diversion requirement must pay liquidated damages to the City and they risk nonrenewal of their franchise. Additionally, the majority of mixed C&D recycling facilities in the area have recycling rates above 75%. Thus, applicants of covered projects, contractors and haulers have many available options to help them achieve 75% waste diversion.
- E. Expand the definition of completion.** Since the ordinance sets a time limit for the submission of the final report based on the project completion date, it is important that the definition of completion include all common project scenarios. The definition needs to include demolition-only projects as well as projects with withdrawn, expired or cancelled permits.
- F. Clarify the definition of performance security.** Money orders and credit card charges need to be added to the acceptable forms of payment for security deposits to reflect current practices. Certificates of deposit, letters of credit or other forms of security in a form approved by the Public Works Director need to be eliminated from the definition, since they are not utilized and the program operates on cash deposits and refund checks mailed out by the City.
- G. Provide for administrative rules and regulations.** The Public Works Director will have the authority to adopt administrative rules and regulations as needed for the purpose of: enforcing the payment, collection and remittance of fees; clarifying administrative requirements; specifying the diversion activities and facilities allowed; and establishing the frequency and protocol of City regulatory inspections and overall compliance monitoring.
- A proposed rule or regulation shall be posted in the Permit Center, providing notice that it is to be adopted no earlier than 21 calendar days from the date on the posted notice and indicating the manner in which written comments may be provided to the Director. A copy of the final adopted rule or regulation shall be posted in the Permit Center no later than 10 days prior to the effective date of the rule or regulation. A copy of all adopted administrative rules and regulations shall be on file in the Director's office.
- H. Clarify accessory structure exemption.** To comply with CALGreen requirements and to be consistent with language in the building code, this

exemption should be reworded to apply to one-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11.15 square meters).

- I. **Add exemption for projects requiring only a plumbing, electrical or mechanical permit.** These projects do not generate the types or quantities of waste targeted by the ordinance.
- J. **Add exemption for projects anticipated to generate minimal waste.** This will allow the Waste Management Plan Compliance Official to exempt projects that generate less than 4 cubic yards of C&D debris.
- K. **Add reference to administrative review fee.** This will clarify that applicants of covered projects are required to pay a non-refundable administrative review fee as well as a refundable performance security deposit.
- L. **Remove waste management plan approval as requirement for permit issuance.** Removing this requirement will allow program staff to tie the waste management plan approval to the first inspection after permit issuance. For many commercial projects, waste hauling bids are not solicited and contracts are not awarded until after permit issuance, so waste management plans written before permits are pulled are just estimations. Moving waste management plan approval to the first inspection after permit issuance will allow applicants to provide more accurate information on their planned waste hauling arrangements and diversion activities and it will also streamline the over-the-counter permit process.
- M. **Increase the time limit for submitting final reports.** The time limit for final report submission should be increased from 30 to 90 days after project completion. Since franchise haulers have 60 days to report tonnage to the City, this timeframe will allow sufficient time for haulers to provide supporting documentation on waste generated during the final months of the project. It also allows sufficient time for out of state contractors to collect all necessary documentation for the final report.
- N. **Specify terms of performance security deposit refunds and forfeits.** This will clarify that the entire performance security deposit may be refunded without interest, upon the applicant's timely submission of the final report and proof that the minimum waste diversion requirement has been met. It adds the statement that the deposit shall be forfeited entirely if the applicant fails to comply with the requirements of the ordinance. It also adds to the statement that refunds will not be authorized when the

submittal date of the final report is beyond 180 days from the completion date of the project.

- O. **Remove monthly reporting requirement.** To streamline administration of the ordinance and reduce paperwork, the monthly reporting requirement should be eliminated. At project completion, applicants are required to submit final reports with waste summaries and supporting documentation from receiving facilities. The final reports provide sufficient information for staff to determine compliance with the waste diversion requirement.

- P. **Change five-day timeframe for refunding security deposits to 30 days.** Thirty days is a more realistic timeframe for the City's refund process.

- Q. **Add the City's right to monitor and inspect.** Field visits to project sites help validate information provided in the waste management plan and final report. They are also helpful in confirming that hauling arrangements are in compliance with PMC Chapter 8.61, Solid Waste Collection Franchise System.

COUNCIL POLICY CONSIDERATION:

This proposed ordinance amendment is consistent with the City Council's goal of increasing conservation and sustainability. It also supports the United Nations Urban Environmental Accords of 2005 Action 4 of achieving zero waste to landfills and incinerators by 2040. Additionally, it supports the Open Space and Conservation Element of the General Plan by increasing the diversion of waste materials from landfills through the reduction, reuse and recycling of wastes to the highest and best use.

ENVIRONMENTAL ANALYSIS:

This activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

FISCAL IMPACT:

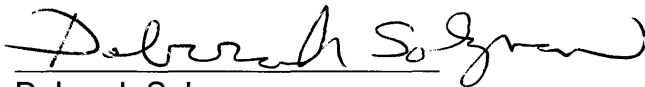
The proposed amendment to the C&D Waste Management Ordinance is anticipated to have minimal fiscal impact. It is estimated that the additional covered projects resulting from the ordinance amendment will generate approximately \$30,000 in annual revenue from non-refundable administrative review fees, which will offset a portion of staff time spent administering the ordinance. All required amendments to the Adopted FY 2014 General Fee Schedule will be presented to the City Council for approval in a later report requesting other budget amendments.

Respectfully submitted,



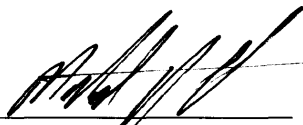
SIOBHAN FOSTER
Director of Public Works

Prepared by:



Deborah Salzman
Program Coordinator I

Approved by:



MICHAEL J. BECK
City Manager

Attachment A – State Required Changes

Attachment B – Recommended Additions to General Fee Schedule