

Agenda Report

August 28, 2023

TO: Honorable Mayor and City Council

THROUGH: Municipal Services Committee (August 22, 2023)

FROM: Department of Public Works

**SUBJECT: PROPOSED AMENDMENTS TO THE CITY OF PASADENA
MUNICIPAL CODE CHAPTER 8.62 WASTE MANAGEMENT PLAN FOR
CERTAIN CONSTRUCTION AND DEMOLITION PROJECTS WITHIN
THE CITY OF PASADENA**

RECOMMENDATION:

It is recommended that the City Council:

1. Find that amending the Waste Management Plan for Certain Construction and Demolition Projects within the City of Pasadena ordinance is exempt from California Environmental Quality Act ("CEQA") Guidelines pursuant to Title 14, Chapter 3, Article 5, Section 15061(b)(3), Common Sense Exemption, and also under Section 15308 as an action by a regulatory agency (the City of Pasadena) for the protection of the environment; and
2. Direct the City Attorney to draft an ordinance amending Pasadena Municipal Code Chapter 8.62 – *Waste Management Plan for Certain Construction & Demolition Projects* within sixty days consistent with the provisions set forth herein.

MUNICIPAL SERVICES COMMITTEE:

On April 11, 2023, Public Works staff provided an update to the Municipal Services Committee regarding the City's Construction and Demolition Waste Diversion Program (C&D) and proposed amendments to the Pasadena Municipal Code (PMC) Chapter 8.62. Committee requested additional information regarding C&D compliance rates and a comparison of C&D deposit fees from surrounding municipalities. In addition, clarification was requested regarding the role of the City's franchised haulers as part of the C&D compliance process.

In response to Committee's request, the following additional information and staff recommendations are offered for Committee's review and consideration:

C&D Program Compliance & Security Deposit Comparison with Other Municipalities

C&D Program thresholds and practices by various nearby municipalities have been collected by staff and is presented in a comparison table as Attachment A. In line with the City of Pasadena, most municipalities calculate the C&D deposit amounts at a ratio of three percent of the permit valuation with minimum deposit thresholds varying between \$200 and \$1,000. The maximum deposits vary from \$10,000 to \$100,000, with cities of Glendale and Santa Monica at \$30,000, similar to Pasadena's amount.

Per the adopted FY 2024 General Fee Schedule, the minimum C&D deposit in Pasadena is \$1,000. This minimum amount of \$1,000 was first introduced and adopted by the City Council in 2019 as part of the FY 2020 General Fee Schedule adoption. At that time, staff had observed that many permittees with deposits under \$1,000 failed to achieve compliance with the City's C&D Ordinance, and consequently did not qualify for a refund of their deposit.

Of the 910 projects completed prior to the implementation of the \$1,000 minimum deposit, the overall compliance rate was 46%. It was also determined that close to 75% of the non-compliant cases were projects charged deposits of less than \$1,000, which can be an indication that low deposit amounts did not effectively incentivize permittees to recycle. Subsequent to implementation of the \$1,000 minimum deposit in FY 2020, the program's overall compliance rate has increased and is currently 86%; although many of the applicants for smaller-sized projects would still voluntarily forfeit their deposits. As such, staff recommends the City maintain its minimum C&D deposit amount at \$1,000 to ensure greater compliance with the C&D Waste Management Ordinance and encourage timely reporting and refund processing.

Alternatively, staff evaluated City's C&D thresholds for residential projects in comparison to State's minimum requirements and other comparable municipalities. Per Section 301.1.1 of the State's CALGreen Code, construction waste management requirements shall apply to "additions or alterations of existing residential buildings where the addition or alteration increases the building's conditioned area, volume, or size". In comparison, City's current C&D Ordinance applies to "all residential alterations and remodels" regardless of added conditioned area or size.

As such, in consideration of small residential alteration and remodel projects, staff recommends establishing a threshold to exempt residential alterations and remodel projects with a permit valuation under \$20,000 from the C&D program. While this proposed threshold will exempt 25%-30% of eligible projects, there will be negligible impact (less than 1.5 percent reduction) on citywide annual recycled tonnage. Furthermore, this proposed exemption will benefit residents and not place undue burden to prepare a waste management plan and submit \$1,000 C&D deposit for a small remodel project valued at less than \$20,000.

Role of Permittee and Franchise Haulers

The C&D Waste Diversion Program is mandated by the State, placing the responsibility for compliance on the entity who generates the waste. As such, the responsible entity would be the permittee, generally the project owner or their contractor. As part of the initial C&D application, the permittee shall select one of the City's 21 franchised haulers or select the option to self-haul. It is the permittee's responsibility to coordinate with the hauler hired for the project to ensure work is performed per the permittee's prepared waste management plan and chosen recycling facility. This is a private transaction paid by the individual permittee to the selected franchised hauler. The transaction is independent of any agreement between the City and its authorized franchise haulers which encompasses a broader service scope to include citywide disposal of other solid wastes, such as regular household and/or bulky items. In exchange for the use of City streets by heavy trucks for such hauling, established franchise fees are paid to the City.

BACKGROUND:

The City's C&D Waste Diversion Program was established in 2002 as a response to Assembly Bill 939, passed in 1989 and implementing diversion requirements for the waste generated from construction and demolition. The goal of this program was to divert waste away from landfills and recycle these materials. The City adopted the State's required minimum diversion rate of 50%. The C&D Program was implemented through Chapter 8.62 of the PMC titled "Waste Management Plan for Certain Construction and Demolition Projects within the City of Pasadena." The PMC governs the various project types covered under and exempted from C&D Program; administrative review fees and refundable security deposits to ensure compliance; diversion standards; supporting document and compliance report submittals and review timeline; and refund, forfeiture, and appeals process.

In 2014, the State revised the California Green Building Standards Code and the City Council amended Chapter 8.62 of the PMC. When State regulations increased minimum diversion rates from 50% to 65% in 2014, the City complied by raising its diversion rate to 75%. The 2014 amendments also included a lower square-foot threshold and an expansion of scope to include all residential remodeling projects, which resulted in a significant increase in volume of projects required to participate in the C&D Program. On average, the City processes over 1,100 C&D applications each year.

Along with updated State regulations, the City's 2014 amendments to Chapter 8.62 of the PMC included procedural changes which enhanced the program by addressing challenges identified in the first ten years of implementation. These included a provision that security deposits for projects which did not comply with C&D regulations were considered forfeited. The City's C&D Program requires applicants to submit both a non-refundable administrative review fee and a refundable performance security based upon the adopted General Fee Schedule. The security deposit is refunded upon the applicant's timely submission of a complete compliance report demonstrating that all

project C&D requirements had been met. If the applicant fails to meet the City's diversion and recycle requirements, the security deposit is forfeited entirely.

In 2021, an internal audit identified and recommended areas for improvement within the C&D Program. The corresponding corrective actions included the development of a policy for further defining permit status to identify a protocol for processing C&D deposits; development of processes and procedures to define roles and responsibilities with segregation of duties across multiple departments to improve program accountability; increase of public awareness, education, and outreach of the C&D Program; and implementation of both internal and external application software to maximize automation of communication, data collection, tracking and processing.

In addition, a comparative study of Southern California municipalities was conducted to assess best practices moving forward. Agencies included Burbank, Glendale, Los Angeles, Santa Clarita, Santa Monica and Los Angeles County amongst others. Staff selected best practices and elements from other agency ordinances to determine the proposed policy and procedural enhancements. The goals for improvement were to streamline the process; improve customer service; minimize procedural errors; and maximize citywide compliance with the C&D Program. The mitigation measures were systematically developed and closely monitored with quarterly updates submitted to the Internal Audit Manager. The internal audit recommendations have been fully addressed and improvements to the process have been implemented, except for updating the current ordinance to better support the C&D Program goals as proposed herein.

The proposed amendments to PMC Chapter 8.62 seek to address the primary findings of the internal audit and staff's comparative study. Key updates to the C&D program include the following proposed amendments:

- Exempt residential alteration and remodel projects with permit valuation of \$20,000 or less.
- Update commercial project thresholds to match State's requirements.
- Require permittee to submit a C&D waste management plan for the project and obtain City approval prior to issuance of a permit.
- Require permittee to submit C&D compliance reports prior to final inspection and/or issuance of occupancy.
- Streamline the appeal process for permittee.

The proposed amendments to the C&D ordinance will allow the City to enhance the program with clearly defined project thresholds and systematic tracking of permit status, ensuring compliance at various trigger points during construction of a permitted project. Further explanation of the proposed amendments is provided in Attachment B.

COUNCIL POLICY CONSIDERATION:

The ordinance supports the City's General Plan Goal number 10, which is to establish Pasadena as a leader on environmental stewardship efforts.

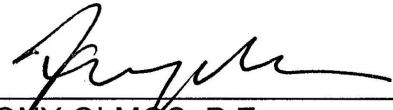
ENVIRONMENTAL ANALYSIS:

The adoption of this ordinance amendment is exempt under the California Environmental Quality Act (CEQA) Guidelines in accordance with Title 14, Chapter 3, Article 5, Section 15061(b)(3), Common Sense Exemption and also under Section 15308 as an action by a regulatory agency (the City of Pasadena) for the protection of the environment. The Common Sense Exemption (formerly the general rule) states 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. This amendment to PMC Chapter 8.62 would clarify provisions of the ordinance and not involve any direct or indirect changes to the physical environment. Section 15308 of the CEQA Guidelines provides a categorical exemption (Class 8) for actions taken by a regulatory agency for protection of the environment. The proposed action is covered by this categorical exemption as an action taken by the City in its regulatory capacity to manage waste and thereby protect the environment. There are no features that distinguish this project from others in the exempt class and, therefore, there are no unusual circumstances.

FISCAL IMPACT:

Staff costs associated with processing, review and approval of C&D submittals are recovered by the non-refundable administrative review fee in accordance with the City's adopted General Fee Schedule. There is no proposed change to the General Fee Schedule and therefore no fiscal impact as a result of this action.

Respectfully submitted,




TONY OLMOS, P.E.
Director of Public Works

Prepared by:



Kris Markarian, P.E.
Deputy Director of Public Works/City Engineer

Approved by:



MIGUEL MÁRQUEZ
City Manager

Attachment A – C&D Program Comparison with Other Municipalities
Attachment B – Summary of Proposed Changes to PMC Chapter 8.62