

APPENDIX A

**LRMOSP
PERTINENT REGULATORY REQUIREMENTS AND
KEY POLICY AND PLANNING ISSUES**

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This appendix contains a discussion of regulatory requirements and policy and planning issues impacting the City of San Diego's management of solid waste. The information is presented in the order of State, regional and local requirements.

A.1 CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989 (AB 939)

Assembly Bill 939 (AB 939) (the Integrated Waste Management Act, set forth in Public Resources Code section 4000 et. seq.) was enacted in 1989 finding that “[t]he reduction, recycling, or reuse of solid waste generated in the state will, in addition to preserving landfill capacity, serve to conserve water, energy, and other natural resources .. .” California Public Resources Code, Sections 41780 through 41786 set waste diversion requirements for cities and counties. These requirements were modified in the 2008 legislature to be “per capita disposal limits” rather than “waste diversion requirements.”

AB 939 required each jurisdiction to document 50 percent diversion of waste from landfill disposal. In 2004, with the cooperation of local residents, businesses, and the military, the City surpassed the State mandate with 52 percent diversion. Now the challenge is to maintain the diversion rate over 50 percent and work for even more waste reduction. It is possible that the State may impose additional requirements, such as mandatory decreases in per capita disposal. With or without State mandates, many communities, including San Diego, are developing Zero Waste programs, goals, and policies.

A.2 COUNTY OF SAN DIEGO, INTEGRATED WASTE MANAGEMENT PLAN, COUNTYWIDE SUMMARY PLAN AND COUNTYWIDE SITING ELEMENT (2005)

A review of the County of San Diego (County) Integrated Waste Management Plan (CIWMP) Countywide Summary Plan and Countywide Siting Element, 2005 five-year revision, provided a regional perspective of the County's integrated

waste management goals, policies, and provisions for 15 years of landfill disposal capacity.

The County established goals to guide regional management of solid waste guided by the Integrated Waste Management Act (AB 939 or IWMA). The goals are to ensure sustainability, conserve natural resources and landfill capacity, and meet state mandated diversion requirements; implement new source reduction, recycling and composting programs on a multi-jurisdictional basis; strive to strengthen markets for reusable, recyclable and compostable materials; ensure all residents have convenient access to a program that safely and effectively handles and disposes of household hazardous wastes; to ensure long-term landfill capacity with reduced impact on the natural environment; and encourage all federal agencies and Native American tribes in the county to abide by and promote solid waste reduction practices.

The objectives of this plan are for the cities and the County to implement an Integrated Waste Management system designed to divert a majority of the waste stream from landfill disposal; to optimize the current disposal capacity; to follow the AB 939 waste reduction hierarchy of source reduction, reuse, recycling, composting and transformation, providing efficient, economic and environmentally sound disposal for residual waste; to ensure efficient, economic, and environmentally sound management of existing and proposed solid waste management facilities, and to recommend a more thorough feasibility study be conducted to determine the best long-term strategy.

The regional solid waste infrastructure consists of several elements. The SANDAG is the region's Integrated Waste Management Local Task Force (LTF), providing advice and assistance for integrated solid waste management planning. The LTF has two advisory committees, the Citizens Advisory Committee comprised of public interest groups and industry representatives, and the Technical Advisory Committee, comprised of the County Chief Administrative Officer and city managers from each jurisdiction, or their designee.

The cities of Del Mar, Encinitas, National City, Poway, Solana Beach and Vista have formed a Regional Solid Waste Association (RSWA). The City of San Diego operates its own solid waste management system, which includes a certain amount of solid waste collection, and operation of the Miramar Class III (non-

hazardous) sanitary landfill, the Greenery composting facility at the landfill, and the recycling and permanent household hazardous waste collection facilities, also at the landfill. The City collects and takes certain residential waste to the city's Miramar Landfill, or to the Sycamore or Otay landfills, according to the most economical routing.

Waste generators receiving City service must purchase a black container for refuse and they are provided a blue container for recyclable materials. Waste generators are required to provide their own 32- or 45-gallon size for curbside yard collection.

Current solid waste management practices include separate collection of refuse and recyclables, and in certain cases removal of recyclables from waste at transfer stations. Collections from waste generators that are not served by City crews are made by permitted and franchised haulers.

Allied Waste Industries, Inc. operates active Class III sanitary landfills at Sycamore Canyon, Otay, Ramona, and Borrego, and seven rural bin site transfer stations. Most cities use the regional landfills for solid waste disposal. Some cities export varying portions of solid waste to out-of-county disposal facilities.

The Countywide Siting Element serves as a general guide and description of landfill use and capacity. It provides a description of a combination of strategies that will provide for at least 15 years of solid waste disposal capacity for all the jurisdictions within the County. The Countywide Siting Element 2005 5-year revision projects disposal needs for the 15-year period of 2002 to 2017 with analysis carried through 2020. The projections assume that in 2005, an average 50 percent diversion rate is reached for all San Diego County jurisdictions. The Siting Element emphasizes the goal that landfill capacity be optimized through diverting materials in the most economically and environmentally sound way.

The goals of the Siting Element are to optimize the current disposal capacity; provide efficient, economically and environmentally sound disposal capacity for residual wastes; sound management of existing and proposed solid waste management facilities; and to maintain and update the Countywide Siting Element in accordance with the requirements of IWMA.

A gradual increase in annual waste generation and disposal is projected. Disposal is predicted to increase from 3.7 million tons in 2002 to 6.5 million tons in 2017. The Siting Element estimates that San Diego County jurisdictions will need to accommodate disposal capacity for over 5.6 million tons of solid waste in 2017.

The scenario used to achieve 15 years of disposal capacity involves regional achievement of a 50 percent diversion rate (2005), a proposed opening of Gregory Canyon Landfill and an expansion of Sycamore Canyon Landfill (2005, and 2011). The Siting Element stipulates that using current disposal projections, if the permitted limits on the rates at which wastes enter the landfills are not changed, the region would run out of the ability to accept all the waste destined for disposal in 2007. Increasing the annual rate of acceptance at the existing Sycamore Canyon Landfill by 535,000 tons in 2005 and by 2.7 million tons in 2011 would provide adequate capacity until approximately 2016. If opened, the proposed Gregory Canyon Landfill combined with Sycamore would provide capacity until 2020 for all of the City's residential and commercial waste.

There are seven existing landfills in San Diego County. Five accept municipal solid waste with Las Pulgas and San Onofre only accepting military waste. Of the five landfills that accept municipal solid waste, four are privately owned and operated by Allied Waste Industries, Inc including the Borrego, Otay, Ramona and Sycamore landfills. The fifth, Miramar Landfill, is operated by the City of San Diego, on land owned by the United States Navy and leased to the City.

The Siting Element identifies several strategies for additional capacity to help meet the region's 15-year disposal needs and recommends a more thorough feasibility study be conducted to determine the best long-term strategy or combination of strategies. The first strategy is a waste diversion goal. This goal is to optimize the current disposal capacity by encouraging jurisdictions to meet the state diversion requirement as soon as possible by implementing their Source Reduction and Recycling Elements. A projected additional two to six years of capacity could conceivably be derived with increases in diversion. A second strategy involves new facilities and technologies. Landfill capacity can be preserved through new technologies in waste reduction and diverse disposal options such as waste compression and more efficient landfill management practices. The siting of more composting, resource recovery and construction

and demolition processing facilities could provide environmentally safe alternatives to disposal.

The third strategy is exportation of waste out-of-county. Private companies, the City of San Diego at the Miramar Landfill, and market conditions determine waste flow and disposal locations. Each year some solid waste is exported from San Diego County. The amount fluctuates from year to year. In 1995, the region exported 14 percent of its waste compared to 4 percent in 2001. If the Sycamore Canyon Landfill expansion and the proposed Gregory Canyon Landfill are approved with proposed increases in daily permitted disposal tonnages, the region may need to export 7.2 percent of its waste in 2017 to meet the region's disposal need of 6.1 million tons. If neither landfill proposal is approved without using other strategies, the region may need to export up to 55 percent of its waste in 2017.

The fourth and last strategy is an increase in daily and annual permitted disposal tonnages at in-county landfills. The combined physical capacity of existing and proposed landfills could provide sufficient disposal capacity for the region, but not without modifying the current daily and annual limits on traffic and amounts of solid waste allowed into the facilities under current permits.

The Siting Element also acknowledges that transfer stations have a vital role in landfill disposal strategy and are an essential component of all the strategies for providing additional landfill capacity for San Diego County. Privately owned transfer stations and the rural bin network currently handle approximately 60 percent of the County's solid waste.

AB 939 requires that each city or jurisdiction develop a Source Reduction and Recycling Element (SRRE), a Household Hazardous Waste Element and a Non-Disposal Facility Element (NDFE), including its own solid waste management planning, implementation, monitoring, public information, budgeting and enforcement.

**A.3 PEOPLE’S ORDINANCE OF 1919
(City of San Diego Municipal Code - Chapter 6, Article 6, Division 7,
Section 66.0127)**

San Diego Municipal Code Section 66.0127 (copy included as Appendix A-1) regulates Refuse Collection for the City of San Diego and is referred to as the “People’s Ordinance.” This Ordinance mandates the San Diego City Council to regulate and control the collection, transportation and disposal of all refuse by ordinance. It requires certain refuse to be collected, transported and disposed of by the City at least once each week with no direct City fee imposed. Most of the waste generators served under this ordinance are single family residences located on public streets, but the Ordinance also provides for nonresidential refuse to be collected by City Forces with no City fee imposed if authorized by the City Council.

A copy of the ordinance is included as Appendix A-1.

A.4 PROPOSITION H (1987)

The purpose of Proposition H was to amend the City of San Diego Progress Guide and General Plan regarding the combustion or burning of solid waste. The measure states that the City of San Diego would impose the following standards on solid waste facilities burning 500 tons or more per day of solid waste:

- 1) No facility could be built that would:
 - Increase existing levels of toxic air pollutants within the City as those levels are determined by Federal, State, or San Diego public agencies; or
 - Be located within a three mile radius of a hospital, elementary school, or child care center or nursing home for the elderly licensed by a governmental entity; or
 - Make additional demands on the treated water distribution systems within the city.

- 2) Any such facility built shall include recycling and separation methods whereby major sources of toxic air pollutants, including but not limited to plastics, metals, industrial wastes, and coating are removed from the solid waste prior to the incineration.

The Proposition was approved by the voters on November 3, 1987. A copy of Proposition H is included as Appendix A-2.

A.5 CITY'S RECYCLING ORDINANCE OF 2008 -(City of San Diego Municipal Code – Chapter 6, Article 6, Division 7, Sections 66.0701 to 66.0718)

The City's Recycling Ordinance (copy included at the end of this section) established recycling requirements for solid waste generated by residential and commercial facilities, City buildings and special events effective as early as January 1, 2008. The ordinance is intended to increase diversion to meet AB 939 requirements and avoid financial consequences, conserve landfill capacity, extend the life of the Miramar Landfill and reduce greenhouse gas emissions. Recyclable wastes include plastic bottles, jars, paper, metal and glass containers, cardboard, and other recyclable wastes for which markets exist.

Single family residences and multi-family residential facilities will be required to recycle by participating in a recycling program offered by their hauler or a recyclable waste collector or by personally separating and delivering recyclable waste to a recycling facility. On-site recycling receptacles and educational materials would be required at multi-family residential facilities. Recyclables would be collected at least two times per month from the residences or residential facilities.

Commercial facilities are required to provide on-site recycling receptacles and education and recycle in the same manner as multi-family residential facilities with collection of recyclables scheduled as frequently as necessary to meet demand. These requirements would also apply to City buildings over 5,000 square feet. Special events requiring a City event permit would be required to provide an equal number of recycle receptacles as refuse receptacles.

Private haulers and City-designated recyclables collectors who provide collection services will have to submit an annual report to the City of ESD with specific information on their recycling efforts in compliance with the ordinance. No one

is prohibited from personally collecting and transporting their own recyclable wastes to a recycling facility, however, persons who self-haul will also be required to comply with the annual reporting requirements.

Multi-family and commercial facilities will be phased in (based on building square footage) with full implementation of all facilities by January 2010. A copy is included as Appendix A-3.

**A.6 CONSTRUCTION & DEMOLITION DEBRIS DIVERSION DEPOSIT PROGRAM
(City of San Diego Municipal Code – Chapter 6, Article 6, Division 6,
Sections 66.0601 to 66.0610)**

Studies have shown that approximately 35% of the waste generated in the City of San Diego delivered for disposal is construction and demolition debris. This material could be diverted from landfill disposal through recycling, repurposing, and reprocessing. Efforts by the City and the private sector to encourage voluntary construction and demolition debris diversion have not been as successful as the City had hoped and additional efforts were necessary to ensure continued compliance with AB 939 requirements.

This program is intended to increase the diversion of construction and demolition debris from landfill disposal, conserve the capacity and extend the useful life of the Miramar Landfill, and avoid the potential financial and other consequences to the City of failing to remain in compliance with AB 939 requirements.

Under the Construction and Demolition Debris Diversion Deposit Program (a copy is included in this section), the City mandates the diversion of 50% to 75% of construction and demolition debris from local landfills. The City will use the Building Permit and Demolition/Removal Permit process currently in-place as the instrument to implement the C&D ordinance and track diversion of this material. Applicants will be required to submit a completed Waste Management Form Part I and pay a refundable deposit at the time the permit is issued. After completing the Waste Management Form Part II, the applicant will be entitled to a refund by the ESD in the same proportion to the deposit paid by the applicant as the diversion rate achieved for the development is to the applicable diversion

rate. The outset of the ordinance requires a diversion rate of 50% by weight of the total construction and demolition debris generated by the development.

In addition to the deposit program, fees have been adjusted at the Miramar Landfill to include a construction and demolition surcharge. These adjusted fees will provide incentive to dispose of waste at Lemon Grove instead of Miramar. Overall, then, this ordinance creates an economic incentive to recycle this type of debris. A copy is included as Appendix A-4.

A.7 CITY OF SAN DIEGO NON-DISPOSAL FACILITY ELEMENT (2005)

The Sixth Amendment of the City of San Diego Non-Disposal Facility Element (NDFE) dated December 2005 was adopted by the San Diego City Council. The City's NDFE lists facilities that are or will be used to implement diversion programs in the SRRE. The City of San Diego's waste stream contains a significant portion of recyclable materials, warranting concerted diversion efforts. Towards this end, several programs, facilities, and outreach efforts are identified in this NDFE.

The document identifies composting programs and facilities. Approximately 20.3 percent of the San Diego waste stream is composed of organic wastes. City programs aimed at diverting these organics from the landfill include the Christmas Tree Recycling Program responsible for diverting about 1,200 tons per season; the Food Waste Composting Program, diverting 1,000 tons per year; the Curbside Yard Waste Collection Program, diverting 33,000 tons of material per year; and the Back Yard Composting Program which provides subsidized bin sales and educational programs. In addition, three facilities provide composting services for the City including Evergreen Nursery which processes 16,500 to 22,000 tons of green waste annually, Miramar Greenery Composting Facility at the Miramar Landfill diverts approximately 100,000 tons of yard trimmings and other organics per year from the Miramar Landfill, and Miramar Wholesale Nurseries processes about 20,000 cubic yards of green waste per year.

Other waste-handling facilities are identified in the City's NDFE. EDCO Recovery and Transfer Station on Dalbergia Street in San Diego, handles 1,500 tons per day of mixed waste. While the facility provides an additional transport option, it

is not considered to make a significant contribution to waste reduction because it diverts less than five percent of the throughput.

Near the City of San Diego there are two transfer stations that divert more than five percent of the throughput. Waste Management Transfer Station in El Cajon transfers mixed municipal waste and source separated loads of commingled recyclables to large trucks for transportation and the EDCO Station in La Mesa is primarily a mixed waste transfer station.

A City MRF is planned for the Miramar Landfill in the future to reduce the amount of waste, especially construction and demolition debris buried in the landfill. The MRF is proposed to process up to 722,200 tons of mixed municipal waste and divert at least 50 percent of this material from disposal in the Miramar Landfill annually. The City is investigating MRF/transfer station technologies to determine the best technology to compliment this facility.

A number of facilities are identified that either support the City's curbside and Park and Recreation Programs or are promoted by the City. They include the Allan Company Recycling Center, located on a rail line for long distant transport of materials. This facility processes half of the material collected in the City's curbside recyclable materials collection program. IMS Recycling Services, Inc. accepts, separates, and prepares for transport the other half of the recyclable materials collected by the City's curbside program as well as from other sources. The City promotes diversion via a public/private partnership with the Miramar Recycling Facility located at the entrance to the Miramar Landfill, assuring convenient access to a recycling facility. The City also promotes a range of recycling companies by listing them in their Recycling Guide publication.

A.8 MIRAMAR GROUND LEASE BETWEEN CITY OF SAN DIEGO AND U.S.A., DEPARTMENT OF THE NAVY

Miramar Ground Lease Agreement executed August 17, 1995 between City of San Diego and United States of America Department of the Navy (Document No. 00-18218)

The 50-year lease (August 17, 1995 to August 16, 2045) encompasses an approximately 1,400-acre portion of Marine Corps Air Station-Miramar consists

of five (5) parcels. The North Miramar Landfill is located on Parcel One (1), the West Miramar Landfill on Parcel Two (2), the access area for the West Miramar Landfill on Parcel Three (3), the South Miramar Landfill on Parcel Four (4), and monitoring and corrective action equipment for methane gas and ground water on Parcel Five (5).

The Department of Navy compensation for the use of the land includes three components: 1) City to provide Navy a lump sum payment at lease execution; 2) City to purchase from Navy of all methane gas extracted from solid waste landfills on the Leased Property, for a total maximum cost not to exceed \$1.5 million. City to make such compensation by means of annual production payments to the Navy equal to two percent (2%) of annual gross revenues derived from the sale of energy produced. When the maximum \$1.5 million cost is reached or five (5) years after lease execution, these terms can be renegotiated; and 3) City to provide Navy with free waste disposal without limitation for Department of the Navy facilities within or on the City of San Diego boundaries for the term of the lease and any extensions.

The City (Lessee) retains title to all improvements and is deemed “owner”, “operator” and “arranger” of waste disposal under the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) and State clean up laws. The Lessee is responsible to comply with all Federal, State and local laws, ordinances, rules, Executive Orders and regulations for all environmental and financial liabilities for landfills. The Lessee is responsible for collection, disposal, and monitoring of methane gas generated utilizing best available control technology (BACT). The leased property may not be used to mitigate environmental impacts and lands of the Department of the Navy outside the leased property are not available for Lessee mitigation of any environmental impacts, on or off leased property. The Lessee is also required to comply with Biological Opinion (#1-6-94-F-37) dated September 29, 1994. The Lessee is responsible for all air quality impacts, past, present and future and is required to obtain emission credits to offset its emissions so as not to limit or otherwise jeopardize emissions from the Naval Air Station.

Special use restrictions require the Lessee to perform in compliance and conformance with the Naval Station Bird Air Strike Hazard (BASH) Management Plan and to use best available control technology (BACT) for sludge processing

for odor control. Any modification or changes to the Lessee's use of the property from the Miramar Landfill General Development Plan (GDP) dated September 1994 requires prior written approval and must be compatible with the guidelines set forth in the Department of the Navy's Air Installation Compatible Use Zone (AICUZ) Study.

A.9 MIRAMAR LANDFILL GENERAL DEVELOPMENT PLAN (1994)

The Miramar Landfill General Development Plan (GDP) dated September 1994 was prepared by City of San Diego, Environmental Services Department, Refuse Disposal Division.

The 1994 GDP, a Comprehensive Master Plan, proposed modification, expansion and siting of projects at the Miramar Landfill to meet State mandates required by AB 939, AB 2027, the California Coastal Commission Order to remove sludge-drying beds from Fiesta Island, a Consent Decree negotiated with the U.S. Environmental Protection Agency (EPA) and the State of California to remedy non-compliance with the federal Clean Water Act. The GDP proposed modifying the easement with the U.S. Navy from 818 acres to approximately 1,424 acres; expanding, relocating and modifying existing City-operated solid waste facilities, and siting new solid waste and sludge processing facilities using a phasing plan implemented over a 10-year period.

Existing facilities to remain included: the West Miramar Phase II Landfill Area, the Disposal Field Operations Office, the Hazardous Waste Inspection Facility, and the Aggregate Processing Plant.

Proposed relocated or modified facilities included: the Recycling Center, the Greens/Wood Waste Center, the Fee Booth, the Vehicle Maintenance Facility and Fuel Pipelines.

Proposed new facilities included: a Materials Recovery Facility (MRF), an Environmental Complex, the Fiesta Island Replacement Project/Northern Sludge Processing Facility (FIRP/NSPF), pipelines and utilities, the FIRP/NSPF Cogeneration Plant, a Paper Pulp Processing Plant, a Household Hazardous Waste Transfer Station, a Public Tipping Transfer Station (Tipping Deck), Landfill

Gas Collection Systems, Phase II Landfill Silt Basin, Mounding Areas, Haul Road, MRF/FIRP Access Road, and a Nursery Area.

A.10 FACILITIES FRANCHISE AGREEMENT WITH EDCO RECOVERY & TRANSFER STATION

Non-Exclusive Facility Franchise Agreement between the City of San Diego and EDCO Disposal Corporation dated April 27, 1999

The City owns and operates a solid waste collection and disposal system used to provide services to substantially all single-family residences in the City, as well as certain multi-family residences, businesses and governmental facilities, and operates the Miramar Landfill. The City and EDCO agreed on the need for existing and future transfer station capacity readily available to the City to achieve landfill diversion goals mandated by the California Integrated Waste Management Act of 1989 (AB 939).

In April 1999, the City granted EDCO a Facility Franchise for the EDCO Transfer Station, 3660 Dalbergia Street. EDCO obtained all permits to upgrade the facility and to increase its capacity to receive and transfer up to 750 tons of municipal solid waste, source separated recyclables and construction and demolition wastes per day for an annual tonnage capacity of 234,000 tons. Daily traffic was projected at approximately 150 vehicles per day with hours of operation from 6 A.M. to 7 P.M. The EDCO facility expansion was completed in late 1999.

Additional Franchise Agreement provisions required EDCO to accept all municipal solid waste, self-hauled waste on weekends, and military waste from City designated approved facilities and maintains records to reflect waste tonnage received. The City allowed for the free disposal at the Miramar Landfill of an equal amount of military waste from the EDCO Transfer Station. EDCO also agreed to sponsor two annual Community Collection Events. EDCO agreed to indemnify the City under the CERCLA.

EDCO contributed annual payments to the City's Community Fund and paid \$0.70 per ton of waste, on all waste transferred from the EDCO Transfer Station for ultimate disposal. The contract fees remained in effect for the first five (5) years with subsequent annual adjustments not to exceed three percent (3%) in

any year in accordance with the Consumer Price Index. The term of the Agreement continues until the permanent closure of the Transfer Station or the term of the Coastal Development Permit or the Coastal Development Permit is modified or amended.

A First Amendment to the Facility Franchise Agreement was executed in May 2002 that included an increase in the daily tonnage to 1,500 tons per day, an annual tonnage capacity of 468,000 tons. Operating days and hours would remain the same. Additional changes to the Agreement included an increase in the average daily traffic to 320 vehicles; military waste accepted only from designated Navy facilities located South of Interstate 8, and an increase to four (4) annual Community Collection Events. The annual contribution to the Community Fund increased based on a contribution of \$0.45 per ton of waste transferred from the transfer station at 75% of the maximum permitted volumes. Franchise Fees paid to the General Fund also increased. The new contribution rate to the Community Enhancement Fund and the Franchise Fee per ton will remain in effect for seven years before being subject to annual escalation. EDCO also has a Franchise Fee Reopener Option in the event the City grants a subsequent transfer station franchise at more favorable franchise fee rates.

A.11 FACILITIES FRANCHISE AGREEMENT WITH SAN DIEGO LANDFILL SYSTEMS, INC., FOR SYCAMORE LANDFILL

Facility Franchise Agreement Between the City of San Diego and San Diego Landfill Systems, Inc. dated June 18, 1999.

Background

The City and San Diego Landfill Systems (SDLS), Inc. executed an Interim Agreement dated June 29, 1998, providing for the development of the 1999 Facility Franchise Agreement to provide for existing and future landfill capacity readily and economically available to the City.

SDLS is the parent company of Sycamore Landfill, Inc., owner and operator of the Sycamore Canyon Landfill and Otay Landfill, Inc., owner and operator of the South Bay Landfill commonly known as the Otay Landfill. To guarantee SDLS performance under the Facility Franchise Agreement, Allied Waste Industries,

Inc., the parent corporation concurrently executed a Guaranty Agreement included as an Appendix to the Facility Franchise Agreement.

With City execution of the Facility Franchise Agreement, SDLS initiated the permitting process for an expansion of the Sycamore Canyon Landfill. The proposed Sycamore Landfill expansion included an increase in the daily peak tonnage, processing and sale of aggregate, Beneficial Use of Biosolids, and recycling of demolition waste.

Annual Waste Acceptance Limitations

SDLS agreed to Annual Waste Acceptance Limitations to assure the City that it would be able to meet its obligations to accept Qualified City Waste through the 2035 estimated life of the Sycamore Landfill, the Guaranteed Acceptance Period. Qualified City Waste is defined as “City collected Residential Waste and City Waste from facilities owned or leased by the City,” currently disposed of at the Miramar Landfill. The Guaranteed Acceptance Period for Qualified City Waste would commence on the earlier to occur (1) when the Miramar Landfill closes or (2) on the date the City begins regular deliveries of Qualified City Waste (daily, monthly or annually). Should SDLS be unable to accept Qualified City Waste due to uncontrollable circumstances, during the Guaranteed Acceptance Period, it must provide sufficient transfer capacity and accept waste for transfer and disposal either at Sycamore or South Bay Landfills or another disposal facility at the agreed Contract Rate and reimburse the City for any actual and reasonable increased costs.

The Annual Waste Acceptance Limitations for each Franchise Year commenced in 1999 at 912,500 tons increasing to 3,574,473 tons by 2035 as outlined in Appendix D of the Facility Franchise Agreement. The annual limitation calculations assumed Miramar Landfill Closure no sooner than 2013. The Annual Waste Acceptance Limitation provides for the following exceptions: 1) Disposal Credit for acceptance of less than the annual specified amount; 2) Deliveries of Qualified City Waste prior to June 30, 2013 without prior notice; 3) Waste accepted during emergencies; 4) Litter clean-up within a one-mile radius of the Landfill, waste from the bi-annual Mission Trails Park clean-up, a maximum of 100 tons of waste from charitable non-profit organizations and community clean-up drives designated by the City; and 5) Commercial waste should the Miramar

Landfill close prior to June 30, 2013 or if the City implements a policy that materially reduces the disposal of commercial waste at Miramar Landfill.

To assure the City of SDLS compliance with the Annual Waste Acceptance Limitations and their ability to accept Qualified City Waste during the Guaranteed Acceptance Period, SDLS provides City written notice of any third-party disposal contracts executed during the Guaranteed Acceptance Period should those contracts contemplate acceptance of more than 500 tons per day and have a term in excess of two (2) years. Also, all third-party disposal contracts must include a provision that Qualified City Waste and Biosolids has priority over third-party contract waste.

Put or Pay Provision

Additionally, commencing with Franchise Year 1999, the City agreed to use the Sycamore or South Bay Landfills on a “put or pay” basis, at the Contract Rate, for the disposal of an aggregate 75,000 tons (no less than 23,750 tons per year) of Qualified City Waste in each rolling three-year period until closure of the Miramar Landfill.

Limitation on Export of City Waste

SDLS may not export Biosolids or Qualified City Waste to another disposal facility other than Sycamore Canyon or South Bay Landfills without providing at least ninety (90) days’ prior written notice to the City, unless the City has pre-approved the proposed alternate landfill within a one-year period preceding such request. The South Bay Landfill and Copper Mountain Landfill located in Welton, Arizona have City pre-approval for Biosolids disposal. SDLS will reimburse the City for any costs reasonably incurred by the City in connection with review of alternate facilities.

City Right to Develop Own Disposal Facility

The City reserved the unconditional right to develop on its own, or in partnership with other entities, public or private, an alternate disposal facility to be located within or outside City boundaries. Upon two years’ prior written notice, the City may terminate its delivery obligations provided: 1) the Miramar Landfill closes;

2) the Guaranteed Acceptance Period for Qualified City Waste terminates; 3) the Contract Rate terminates; or 4) the Facility Franchise Fee is terminated.

Facility Franchise Deposit

On July 1, 1999, SDLS commenced payment of an annual, non-refundable Facility Franchise Deposit of Two Million Three Hundred Thousand Dollars (\$2,300,000) per Franchise Year. The City may utilize these payments for any purposes determined by the City Council.

Facility Franchise Fee

On July 1, 2004 or the first day of the Franchise Year immediately following the Sycamore Canyon Landfill Expansion Date, SDLS commenced quarterly Franchise Fee payments. The Facility Franchise Fee is equal to the total number of Total Quarterly Franchise Fee Tons multiplied by the Per-Ton Franchise Fee Rate. A formula for calculating the fee is specified in the Facility Franchise Agreement.

Disposal Contract Rate

The Contract Rate charged by SDLS for the acceptance and disposal of Qualified City Waste delivered to the Landfill and the South Bay Landfill by the City is calculated by the City and submitted to SDLS. The initial Contract Rate payable by the City was Nineteen Dollars (\$19.00) per ton, consisting of a Base Rate plus any per ton Governmental Fees including those from the California Integrated Waste Management Board (CIWMB) and Local Enforcement Agency (LEA), and subject to escalation.

$$\begin{aligned} \text{Contract Rate} &= \text{Base Rate} + \text{Governmental Fees} \\ \$19.00 &= \$17.51 + \$1.34 \text{ (CIWMB)} + \$1.15 \text{ (LEA)} \end{aligned}$$

Escalation of the Initial Contract Rate of Nineteen Dollars (\$19.00) per ton is adjusted each July 1 during the term thereof, commencing July 1, 2000 according to a formula where the Base Rate for the first Franchise Year was

\$17.51 and the Base Rate for the Franchise year prior to the adjustment year is Base Rate (N-1) described below:

$$\text{Base Rate} = [\text{Base Rate (N-1)}] + [\text{Base Rate (N-1)} \times \text{Index}]$$

The Index used in the calculation of the Base Rate is the Consumer Price Index, all Urban Consumers, Los Angeles/Riverside/Orange County, as published by the United States Department of Labor Statistics in Consumer Price Indexes, Table 3, where for the first adjustment the CPI_n was the February, 2000 value and the CPI_{n-1} was the February, 1999 value using the formula below:

$$\text{Index} = \frac{\text{CPI (n)} - \text{CPI (n-1)}}{\text{CPI (n-1)}}$$

Biosolids

Commencing February 22, 2000, SDLS has the exclusive right and obligation to collect, transport, and dispose of approximately 130,000 tons annually of Biosolids (digested dewatered sludge) generated from the City's Metropolitan Wastewater Treatment Plant at the South Bay or Sycamore Landfill according to City specifications and applicable law. SDLS is required to use reasonable business effort to qualify its disposition of Biosolids accepted as Beneficial Use; provided, however that it is not required to incur any material additional costs unless the City agrees to reimburse such costs.

The Biosolids Services Rate commenced February 22, 2000 at Twenty-Six (\$26.00) Dollars per ton adjusted annually commencing July 1, 2000. The Biosolids Services Base Rate was set at Twenty-Four Dollars and Fifty-One cents (\$24.51) plus any Government Fees using the Contract Rate escalation formulas described above.

Biosolids Services provided by SDLS were scheduled to terminate on February 22, 2005 but could be extended by the City for a subsequent five (5) year period on the same terms and conditions subject to rate escalation as specified or the City could solicit bids from Qualified Alternate Biosolids Services Providers. SDLS retained right of first refusal to match any Qualified Alternate

Biosolids Service provider All-Inclusive Bid if its disposition of Biosolids also constituted Beneficial Use.

City Right to Seek Lower Cost Disposal Options; SDLS Right of First Refusal

In the one- year (1) period prior to the date of the Miramar Landfill Closure (reasonably anticipated by the City), and every five (5) years thereafter, the City may solicit proposals from Qualified Alternate Solid Waste Management Facilities for the disposal of Qualified City Waste. The bids must be (1) lower in cost on an All-Inclusive Bid basis; (2) bonafied and made in good faith; (3) contain a scope of services, safety and operational standards reasonably similar to the Facility Franchise Agreement (excluding Biosolids Services); and (4) have a term of at least five (5) years. Should the City receive such a bid it must notify SDLS six (6) months before the expiration of the applicable five-year (5) period and provide the specifications of the lower bid. SDLS retains the exclusive right to match the bid and continue to accept deliveries of Qualified City Waste at the lower fee specified in the City's bid solicitation. Within thirty (30) days after notification should SDLS elect not to accept Qualified City Waste at the lower bid rate, the City's obligation to deliver Qualified City Waste to Sycamore or South Bay Landfills will terminate at the end of the then applicable five-year (5) term. However, the City retains the right, but not the obligation, to reinstate deliveries of Qualified City Waste to SDLS landfills with eighteen (18) months' prior written notice. Reinstated deliveries will be on the same terms and conditions as specified in this Facility Franchise Agreement for a period not less than five (5) years, including the Contract Rate as escalated in this Agreement.

Rebates for Qualified City Waste Delivered by Private Haulers

Should private haulers deliver Qualified City Waste on a Full Load Basis, SDLS may charge the then generally applicable market rate tipping fee. A Full Load Basis means the delivery consists entirely of Qualified City Waste. The City has no responsibility regarding the payment of the tipping fees. However, for all tons of Qualified City Waste delivered and paid for by private haulers, the City retains the right to a rebate equal to the difference between (1) the per ton amount actually paid to SDLS by the private hauler and (2) the Contract Rate.

Termination; Purchase Option; Breakup Fee

The City and SDLS have no right to terminate the Facility Franchise Agreement for cause except for repeated failure or refusal by either party to substantially perform their obligations. The City retains the right of first refusal should SDLS contemplate sale of the Sycamore Canyon Landfill as a single asset to any third party which is not an SDLS affiliate or subsidiary. SDLS reserves the right to provide any prospective purchases with a Breakup Fee to encourage their participation in the prospective sale. SDLS must provide the City with at least ninety (90) days prior written notice of any contemplated sale. If the City elects to exercise its purchase option, the option will be on the same terms and conditions as offered to SDLS by the third party. If the City purchases the Sycamore Canyon Landfill, the City is required to pay a Breakup Fee which is equal to the greater of (1) \$500,000 or (2) 1% of the purchase price.

A.12 NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISE AGREEMENTS

Non-Exclusive Franchise Agreement Between the City of San Diego and (Franchisee) for Solid Waste Management Services (March 23, 2006 Sample Agreement)

The California Integrated Waste Management Act of 1989 (AB 939) requires local agencies to make adequate provisions for solid waste handling. The City awards non-exclusive franchises to qualified companies for the collection and subsequent transfer, transportation, recycling, processing, and disposal of commercial and industrial and certain residential solid waste. The City has a variety of solid waste collection firms under franchise to provide San Diego businesses Solid Waste Services at competitive prices.

“Franchise” includes Class I and Class II Franchises. A Class I Franchise is a non-exclusive Franchise granted to a Franchisee that collects less than 75,000 tons of refuse per year within the City. To determine eligibility for a Class I Franchise, the annual tonnage of refuse collected within the City by that enterprise, its parent company and all affiliates are combined. A Class II Franchise is granted to a Franchisee that collects more than 75,000 tons of refuse per year within the City. Conversion from a Class I to a Class II Franchise is determined through a review of the Franchisee’s four most recent quarterly reports.

The term of the Franchise is the date that the last party executes the Agreement through June 30, 2013. Beginning July 1, 2008, and every five (5) years thereafter, a five (5) year extension is applied to the term of the Franchise, upon approval of the City Council, so that the remaining term of the Franchise is ten (10) years, unless otherwise terminated according to the Agreement. The City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement and any amendments at the beginning of every Fiscal Year (July 1).

Franchisees pay the City a Class I Franchise Fee, equal to \$1.00 per ton less than the Council approved Franchise Fee payable by Class II Franchisees, on all solid waste collected in the City, regardless of the location of the disposal site. The City Council may modify the Franchise Fee amount and manner of payment at any time during the term of the Agreement. To calculate the Franchise Fee, Recyclable Materials, defined in the Agreement, is not counted as solid waste so long as the material is source-separated at the point of generation and is diverted from disposal and/or incineration as solid waste in accordance with AB 939 guidelines even if the generator is charged a fee for the service. Material of potential economic value mixed with solid waste, collected, and transported to a materials recovery facility or any other facility where the material is subsequently sorted or separated for the purpose of recycling or reuse, is counted as solid waste and subject to the Franchise Fee.

At the end of each calendar year quarter, the Franchisee receives a City invoice specifying the amount, by weight, of solid waste collected within the City and disposed of at the Miramar Landfill during the quarter. The Franchisee, for the same period, specifies the amount of solid waste, by weight, collected in the City and transported to facilities other than the Miramar Landfill.

Franchisee collection services are provided once per week for commercial, industrial, and multi-family dwelling units. Franchisee may collect residential solid waste from residences, which are located exclusively on private streets. The grant of authority to collect residential solid waste is limited by San Diego Municipal Code Section 66.0127, which requires the City to collect residential Solid Waste from residences located exclusively on private streets where a valid hold harmless agreement was in effect prior to November 7, 1986.

A.13 FORTISTAR (PREVIOUSLY MINNESOTA METHANE) CONTRACT

Fortistar LLC acquired 100 percent ownership interests in Minnesota Methane LLC. The Fortistar Methane Group, the landfill gas to energy division of Fortistar, now owns 43 facilities totaling 210 megawatts of generating capacity and four compressor stations selling landfill gas to commercial customers. Fortistar LLC now owns the rights to the landfill gas generated at the Miramar Landfills. The Miramar Landfills have over 200 extraction wells, 73,000 feet of piping, an automatic condensate handling system, three blowers, and two flares and the gas-to-energy plant operated by the Fortistar Methane Group. The BAS Consultant Team was not able to obtain this contract for review in Phase I.

APPENDIX A-1

PEOPLE'S ORDINANCE OF 1919

(5-2003)

pounds filled, nor shall it have a capacity of more than forty-five (45) gallons. Fifty-five (55) gallon oil drums and other heavy gauge reusable petroleum or chemical containers are not acceptable for City refuse collection.

- (h) Brush, landscape, trimmings, crushed cardboard boxes, and similar materials shall be tied securely in bundles weighing not more than fifty (50) pounds and shall be not more than four (4) feet long.
- (i) Reusable containers supplied by a licensee which are used for mechanized collection, including stationary compactors, and used for putrescibles or similar waste matter shall be equipped with close-fitting lids and be leakproof and rodentproof. Containers which are used expressly for dry wastes (construction, demolition, industrial, etc.) may be kept uncovered except as required under applicable provisions of the California Vehicle Code and this Code while being transported upon any street or highway. Containers shall be sanitary and in good repair and shall be clearly identified with the name and telephone number of the licensee.
- (j) Containers which fail to comply with the requirements of this Section, or which have deteriorated to the point where they are no longer in compliance, will be marked by the City of San Diego and will not be collected.
- (k) Recyclable waste material placed out for collection at designated locations shall be in containers designated by the City Manager for such purpose.

(Amended 11-10-1998 by O-18601 N.S.)

§66.0127 Refuse Collection

- (a) As used in this People's Ordinance:
 - (1) "Refuse" means waste material of any nature or description generated within the City limits, excluding hazardous or toxic chemicals, wastes, materials or substances as defined now or hereafter by federal or state law or regulation;
 - (2) "Residential Refuse" means refuse, as defined herein, normally generated from a Residential Facility and which is placed at the curb line of public streets at designated times in approved containers;
 - (3) "Nonresidential Refuse" means all refuse that is not Residential Refuse, as defined herein;

(5-2003)

- (4) “Residential Facility” means a single family or multi-family residential structure used and occupied for Nontransient Occupancy;
 - (5) “Nontransient Occupancy” means occupancy through ownership, lease or rental for periods of one month or more.
 - (6) “Small business enterprise” means a commercial establishment providing sales and services to the public and licensed or taxed by the City.
- (b) No person shall collect, transport or dispose of any refuse except as provided herein.
 - (c) The City Council shall by ordinance regulate and control the collection, transportation and disposal of all refuse provided that:
 - (1) Residential Refuse shall be collected, transported and disposed of by the City at least once each week and there shall be no City fee imposed or charged for this service by City forces;
 - (2) The City shall not collect Nonresidential Refuse, except that Nonresidential Refuse from a small business enterprise may be collected by City Forces if authorized by the City Council and limited to once a week service in an amount no greater than one hundred fifty percent (150%) of the refuse generated by an average City residential dwelling unit. There shall be no City fee imposed or charged for this service by City Forces;
 - (3) The City shall not enter upon any private property to collect any refuse except in the case of public emergency or pursuant to a hold harmless agreement in effect as of the date of adoption of this ordinance;
 - (4) Fees established by ordinance of the City Council for disposal of Nonresidential Refuse shall not exceed the full ascertainable cost to the City for such disposal.
 - (d) Pursuant to the ordinance duly adopted by the City Council, the City Manager may then duly promulgate such rules and regulations as are appropriate to provide for the collection, transportation and disposal of refuse.

(“Refuse Collection” renumbered from Sec. 66.0123 on 10-21-1996 by O-18353 N.S.)

APPENDIX A-2
PROPOSITION H (1987)

CITY OF SAN DIEGO

Proposition H

(This proposition will appear on the ballot in the following form.)

H CITY OF SAN DIEGO INITIATIVE MEASURE. AMENDS THE CITY OF SAN DIEGO PROGRESS GUIDE AND GENERAL PLAN. Shall the City of San Diego Progress Guide and General Plan be amended to impose the following standards on solid waste facilities burning 500 tons or more per day of solid waste?

1. No such facility shall be built that will:
 - a. increase existing levels of toxic air pollutants within the City as those levels are determined by Federal, State or San Diego public agencies; or
 - b. be located within a three mile radius of a hospital, elementary school, or child care center or nursing home for the elderly licensed by a governmental entity; or
 - c. make additional demands on the treated water distribution system within the City.
2. Any such facility built shall include recycling and separation methods whereby major sources of toxic air pollutants, including but not limited to plastics, metals, industrial wastes, and coatings, are removed from the solid waste prior to the incineration.

ADDS TO THE CITY OF SAN DIEGO PROGRESS GUIDE AND GENERAL PLAN AN AMENDMENT TO READ AS FOLLOWS:

AN AMENDMENT OF THE GENERAL PLAN OF THE CITY OF SAN DIEGO TO ADD SOLID WASTE INCINERATION STANDARDS TO THE ENERGY CONSERVATION ELEMENT GUIDELINES AND STANDARDS TO PROVIDE AS FOLLOWS:

In order to protect the public health, safety and general welfare of the people and to foster a physical environment in San Diego that will be most congenial to healthy human development, the following standards are required for solid waste facilities that will burn 500 tons or more per day of residential, commercial or industrial solid waste.

1. No such facility shall be built that will:
 - a. increase existing levels of toxic air pollutants within the City as those levels are determined by Federal, State or San Diego public agencies; or
 - b. be located within a three mile radius of a hospital, elementary school, or child care center or nursing home for the elderly licensed by a governmental entity; or
 - c. make additional demands on the treated water distribution system within the City.
2. Any such facility built shall include recycling and separation methods whereby major sources of toxic air pollutants, including but not limited to plastics, metals, industrial wastes, and coatings, are removed from the solid waste prior to incineration.

ARGUMENT IN FAVOR OF PROPOSITION H

Why have the San Diego Lung Association, San Diego Allergy Society, National Association of Registered Nurses and San Diegans for Clean Air taken strong positions against the so-called "Waste to Energy" SANDER plant in Kearny Mesa?

They know while "waste-to-energy" sounds good, the incinerator industry really is proposing a garbage-burner, a 190-foot-high pollution-spewing smokestack, for San Diego, already the nation's 5th-most air polluted city.

Warning: The greatest danger now is in La Jolla, San Carlos, Del Cerro, Tierrasanta, Scripps Ranch, Clairemont, and Mira Mesa. But, other incinerators are planned in our area. Much more is at stake than the incinerator industry's hoped-for millions in profits.

Our landfill problem must be solved with recycling and appropriate technology, not with giant incinerators that will contaminate our air, and produce very expensive electricity.

The proposed garbage-burning plant will burn 2,250 tons of garbage daily, creating up to 7.5 tons of toxic pollutants each day for us to breathe. Even with sophisticated filtering, the incinerator will emit dioxins, mercury, lead, sulfur dioxide, oxides of nitrogen and other toxics and heavy metals known by doctors to cause cancer, respiratory diseases and serious allergies.

The health hazard is greatest for children, seniors, pregnant women, and the sick.

This initiative creates reasonable standards for dealing with solid wastes. Supporters of SANDER have carelessly waved aside health concerns. One of their health risk analyses was so biased, they received sharp criticism from the county Air Pollution Control District which accused SANDER forces of "ignoring current and proposed emission controls; incorrect emission characterization, and, incorrect projections."

Unlike the incinerator industry, the doctors opposing this facility are not trying to make a sale. Their interest is in our good health.

VOTE YES FOR CLEAN AIR. TRASH TO POLLUTION IS NO SOLUTION.

VOTE YES ON PROP. H

WARREN W. PLESKOW, M.D.,
President
San Diego Allergy Society

LAWRENCE W. STIRLING
Assembly Member, 77th District

LINDA MICHAEL, Chairperson
Sierra Club, San Diego Chapter

KENNETH LASSER, M.D.
Co-Chairman, San Diegans
for Clean Air

ABBE WOLFSHEIMER
Councilmember, City of San Diego

ARGUMENT AGAINST PROPOSITION H

Trash.

San Diegans generate enough trash to fill Jack Murphy Stadium every two weeks. Over 1 1/2 million tons a year, more than 3,000 pounds for every San Diegan. And San Diego is running out of precious open space for new landfills. Our last remaining landfill will close in five to seven years!

Solutions to our trash crisis are not simple and the proposed SANDER waste-to-energy facility is a necessary solution to this growing problem.

The City Council has made a commitment to recycle at least 25% of our trash. But we still need SANDER to reduce our reliance on landfills.

A NO vote on Proposition H will only allow the environmental review on SANDER to proceed so we can learn if it is a safe alternative to landfilling.

Don't Be Misled. Vote NO On Proposition H.

Proposition H will doom San Diego to landfills as our only solution to the trash crisis and will cost taxpayers millions of dollars each year.

Landfills are unsafe and pollute the air. This measure will force San Diego to turn an additional 880 acres of open space into a landfill. They have been shown to contaminate the soil and groundwater and produce toxic air emissions and dangerous methane gases.

Vote No On Proposition H.

Supporters of Proposition H want to tie the City's hands by placing a moratorium on the waste-to-energy technology in San Diego. They are asking you to make this decision before you have the facts! Before environmental studies by California Air Resources Board, the Local Air Pollution Control District and the Environmental Protection Agency are even completed on the proposed SANDER project.

Vote No On Proposition H. It's the wrong approach for San Diego.

Let's:

- Finish the environmental studies
- Limit our reliance on polluting landfills
- Save open space
- Pitch-in on recycling

Help Solve The Trash Crisis.

BILL CLEATOR
City Councilmember

LEE GRISSOM, President
San Diego Chamber of
Commerce

JOYCE URBAN
Environmental Consultant

NORMAN ROBERTS
Waste Management Consultant

ART LUJAN, Business Manager
San Diego Building
Trade Council/AFL-CIO

APPENDIX A-3
CITY RECYCLING ORDINANCE

Article 6: Collection, Transportation and Disposal of Refuse and Solid Waste

Division 7: Recycling Ordinance

(“Recycling Ordinance”

Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0701 Findings

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only municipal landfill in the City. The Miramar Landfill currently is expected to close between 2011 and 2013. Preserving landfill capacity at the Miramar Landfill in order to extend the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.
- (b) The City has met (for 2004 and 2005) and continues to make progress in maintaining the waste *diversion* requirements imposed by AB 939, but additional efforts, particularly in the *recycling* of paper, cardboard, and other *recyclable materials*, will assist the City in maintaining and exceeding the goal of *diverting* 50% of its waste from landfill *disposal*.
- (c) Studies show that approximately 21% of the waste generated in the City of San Diego and delivered for landfill *disposal* is paper and 16% is compostable organics, all of which could be *diverted* from landfill *disposal*.
- (d) Efforts by the City and the private sector to encourage voluntary *diversion* of residential, commercial, and special event waste have not been as successful as the City had hoped and additional efforts are necessary to ensure continued compliance with AB 939 requirements.
- (e) *Recycling* programs in other jurisdictions in the State, similar to the one implemented by this Division, have proven successful in increasing *diversion* of *recyclable materials* and have been favorably received by the California Integrated Waste Management Board.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

(11-2007)

§66.0702 Purpose

The purpose of this Division is to establish requirements for *recycling* of *recyclable materials* generated from residential facilities (both single family and multi-family), commercial facilities (including City buildings), and special events. These requirements are intended to increase the *diversion* of *recyclable materials* from landfill *disposal*, conserve the capacity and extend the useful life of the Miramar Landfill, reduce greenhouse gas emissions, and avoid the potential financial and other consequences to the City of failing to meet AB 939 requirements.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0703 Definitions

All defined terms in this Division appear in *italics*. For purposes of this Division, the following definitions apply:

AB 939 has the same meaning as set forth in Section 66.0102 of this Article.

Certified Recyclable Materials Collector means a *Recyclable Materials Collector* which has been issued a certificate by the City pursuant to this Division.

Collect or *Collection* shall mean to take physical possession of and remove *solid waste* or *recyclable materials* at the place of generation.

Commercial facilities means any facilities that are not *residential facilities* or *mixed use facilities*. *Commercial facilities* includes City buildings for which the *responsible person* is a City of San Diego employee.

Department means the City of San Diego Environmental Services Department or its successor.

Director has the same meaning as set forth in Section 66.0102 of this Article.

Disposal means the final deposition of waste at a permitted landfill or other permitted waste facility.

Diversion or *Divert* means the reduction or elimination of *solid waste* from landfill *disposal*.

Franchisee has the same meaning as set forth in Section 66.0102 of this Article.

Mixed use facilities means facilities which include both residential and commercial uses.

(11-2007)

Person has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable Materials has the same meaning as set forth in Section 66.0102 of this Article.

Recyclable Materials Collector has the same meaning as set forth in Section 66.0102 of this Article.

Recycling or *Recycle* has the same meaning as set forth in Section 66.0102 of this Article.

Recycling facility means a *recycling*, composting, or materials recovery or reuse facility.

Refuse has the same meaning as set forth in Section 66.0102 of this Article.

Residential facility has the same meaning as set forth in Section 66.0127(a)(4) of this Article.

Responsible person has the same meaning as set forth in Section 11.0210 of the San Diego Municipal Code including, but not limited to, the individual or entity responsible for the management of *solid waste* at the *residential, commercial or mixed use facility* or special event for *disposal* or *recycling*.

Self-haul means the process of personally, or through one's own full-time employees, *collecting*, transporting, and delivering one's own *solid waste* or *recyclable materials*.

Solid waste has the same meaning as set forth in Section 66.0102 of this Article.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0704 Unlawful Acts

It is unlawful for any *person* to fail to comply with any provision or requirement set forth in this Division which is applicable to such *person*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0705 Recycling Requirement for Persons Serviced by City of San Diego

Effective January 1, 2008, *persons* who are provided with curbside *recycling collection* services by the City of San Diego shall participate in the City curbside *recycling* program by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the approved *recycling* container.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0706 Recycling Requirement for Residential Facilities Serviced by Franchisee

- (a) Occupants of Single Family *Residential Facilities*. Effective on the 90th day after the date of final passage of the ordinance adopting this Division, occupants of single-family *residential facilities* which receive *solid waste collection* service from a *Franchisee* shall participate in a curbside *recycling* program, offered by the *Franchisee* or a *Recyclable Materials Collector*, by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the *recycling* container provided by the *Franchisee* or *Recyclable Materials Collector*.
- (b) Single Family *Residential Facilities* Managed by Association. For single family *residential facilities*, whose *solid waste collection* services are managed by an association or other organization responsible for providing for *solid waste collection* services to multiple single family *residential facilities* within a housing development, the *responsible person* for the association or other organization shall provide curbside *recycling* services to each single family *residential facility* in compliance with the requirements in sections 66.0706(e) and 66.0706(f), beginning on the 90th day after the date of final passage of the ordinance adopting this Division.
- (c) Multi-Family *Residential Facilities*. For multi-family *residential facilities* which receive *solid waste collection* service from a *Franchisee*, the responsible *person* shall provide on-site *recycling* services to occupants as required by this Division, by the following dates:
- (1) The 90th day after the date of final passage of the ordinance adopting this Division, for multi-family *residential facilities* with 100 *residential* units or more;
 - (2) January 1, 2009, for multi-family *residential facilities* with at least 50 but not more than 99 *residential* units; and
 - (3) January 1, 2010, for multi-family *residential facilities* with up to 49 *residential* units.
- (d) Occupants of Multi-Family *Residential Facilities*. Occupants of multi-family *residential facilities* which receive *solid waste collection* service from a *Franchisee* shall participate in a *recycling* program by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the *recycling* container provided by the *Franchisee* or *Recyclable Materials Collector*, beginning on the applicable dates specified in Section 66.0706(c).

(11-2007)

- (e) *Recycling Services.* The *recycling* services required by this Section 66.0706 shall include, at a minimum, all of the following:
- (1) *collection of recyclable materials* at least two times per month;
 - (2) *collection* of plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers;
 - (3) utilization of *recycling* receptacles which comply with the standards in the Container and Signage Guidelines established by the *Department*;
 - (4) designated *recycling collection* and storage areas; and
 - (5) signage on all *recycling* receptacles, containers, chutes, and/or enclosures which complies with the standards described in the Container and Signage Guidelines established by the *Department*.
- (f) *Occupant Education.* For multi-family *residential facilities*, the *responsible person* shall ensure that occupants are educated about the *recycling* services as follows:
- (1) Information, including the types of *recyclable materials* accepted, the location of *recycling* containers, and the occupants responsibility to *recycle* pursuant to this Division, shall be distributed to all occupants annually;
 - (2) All new occupants shall be given information and instructions upon occupancy; and
 - (3) All occupants shall be given information and instructions upon any change in *recycling* service to the facility.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0707 Recycling Requirements for Commercial Facilities Serviced by Franchisee

- (a) *Commercial facilities.* For *commercial facilities* which receive *solid waste collection* services from a *Franchisee*, the *responsible person* shall provide on-site *recycling* services to occupants as required by this Division, by the following dates:
- (1) The 90th day after the date of final passage of the ordinance adopting this Division, for *commercial facilities* of 20,000 square feet or more;

- (2) January 1, 2009, for *commercial facilities* of 10,000 square feet or more, but less than 20,000 square feet; and
 - (3) January 1, 2010, for *commercial facilities* under 10,000 square feet.
- (b) Occupants of *Commercial Facilities*. Occupants of *commercial facilities* which receive *solid waste collection* service from a *Franchisee*, shall participate in a *recycling* program by separating *recyclable materials* from other *solid waste* and depositing the *recyclable materials* in the *recycling* container provided by the *Franchisee* or *Recyclable Materials Collector*, beginning on the applicable dates specified in Section 66.0707(a).
- (c) *Recycling Services*. The *recycling* services required by this Section 66.0707 shall include, at a minimum, all of the following:
- (1) *collection of recyclable materials* as frequently as necessary to meet demand;
 - (2) *collection* of plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers;
 - (3) *collection* of other *recyclable materials* for which markets exist, such as scrap metal, wood pallets, and food waste, as determined by the *Director*, with *collection* of such *recyclable materials* required beginning on the 181st day after the City gives public notice thereof by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City and posting a notice including such *recyclable materials* on a list maintained on the *Department's* website;
 - (4) utilization of *recycling* receptacles or containers which comply with the standards in the Container and Signage Guidelines established by the *Department*;
 - (5) designated *recycling collection* and storage areas; and
 - (6) signage on all *recycling* receptacles, containers, chutes, and/or enclosures which complies with the standards described in the Container and Signage Guidelines established by the *Department*

(11-2007)

- (d) Occupant Education. For *commercial facilities*, the *responsible person* shall ensure that occupants are educated about the *recycling* services as follows:
 - (1) Information, including the types of *recyclable materials* accepted, the location of *recycling* containers, and the occupants responsibility to *recycle* pursuant to this Division, shall be distributed to all occupants annually;
 - (2) All new occupants shall be given information and instructions upon occupancy; and
 - (3) All occupants shall be given information and instructions upon any change in *recycling* service to the *commercial facility*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0708 Recycling Requirements for Mixed Use Facilities

- (a) Majority Residential. For a *mixed use facility* which has the majority of its square footage devoted to residential uses, the *responsible person* shall comply with the *recycling* requirements set forth in Section 66.0706 of this Division.
- (b) Majority Commercial. For a *mixed use facility* which has the majority of its square footage devoted to commercial uses, the *responsible person* shall comply with the *recycling* requirements set forth in Section 66.0707 of this Division.
- (c) Occupants of Majority Residential *Mixed Use Facility*. Occupants of a *mixed use facility* which has the majority of its square footage devoted to residential uses, shall comply with the *recycling* requirements applicable to occupants set forth in Section 66.0706 of this Division.
- (d) Occupants of Majority Commercial *Mixed Use Facility*. Occupants of a *mixed use facility* which has the majority of its square footage devoted to commercial uses, shall comply with the *recycling* requirements applicable to occupants set forth in Section 66.0707 of this Division.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

(11-2007)

§66.0709 Delivery of Recyclable Materials to Recycling Facility

Franchisees and Recyclable Materials Collectors who collect recyclable materials generated within the City shall deliver those recyclable materials to a recycling facility. Persons who self-haul recyclable materials must deliver those recyclable materials to a recycling facility. The recycling facility may be located at a landfill, but recyclable materials generated within the City shall not be delivered to a landfill or other site for disposal.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0710 Recycling Containers

- (a) Container Signage. Automatic lift containers, bins, roll-offs, and other containers provided by *Franchisees and Recyclable Materials Collectors to collect and store recyclable materials pending collection* shall be clearly identified as a *recyclable materials* container, shall display the name and phone number of the *Franchisee or Recyclable Materials Collector* to whom the container belongs, and shall display a list of the *recyclable materials* which may be deposited into the container.
- (b) Container Features. Automatic lift containers, bins, roll-offs, and other containers used to *collect and store recyclable materials pending collection* shall be equipped with close-fitting lids and be leak-proof and rodent-proof.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0711 Annual Reports from Franchisees and Recyclable Materials Collectors

- (a) *Franchisees and Certified Recyclable Materials Collectors* shall submit an annual report by August 15 of each year, beginning August 15, 2008, to the *Department*, on a form or using a format prescribed by the *Director*. Annual reports shall include the following information for each facility serviced within the City for the period June 30 through July 1 of the immediately preceding twelve month period:
 - (1) The name of the *person(s)* responsible for *solid waste* and/or *recyclable materials* management at the facility serviced;
 - (2) The name and address of the facility serviced;
 - (3) The volume in cubic yards or gallons, measured by the size of the applicable containers in use at the facility, of *solid waste* and *recyclable materials collected* per week from the facility;

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- (4) The frequency of *solid waste* and *recyclable materials collection* service provided to the facility; and
 - (5) Additional information as required by the *Director*.
- (b) *Franchisees and Recyclable Materials Collectors* also shall include in the annual reports for the time period specified in section 66.0711(a) the following information:
- (1) The total amount of *recyclable materials*, measured in tons, *collected* by the *Franchisee* or *Recyclable Materials Collector* within the City; and
 - (2) The names and addresses of the *recycling facilities* to which the *recyclable materials collected* within the City were delivered for *recycling*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0712 Special Events Recycling

- (a) For a community special event requiring an event permit from the City of San Diego, the *responsible person* shall provide *recycling* receptacles throughout the event venue, effective beginning on the 90th day after the date of final passage of the ordinance adopting this Division.
- (b) The number of *recycling* receptacles shall equal the number of *solid waste* receptacles.
- (c) The *solid waste* and *recycling* receptacles shall be placed next to one another throughout the event venue.
- (d) The types of *recyclable materials* suitable for deposit into each *recycling* receptacle shall include, at a minimum, aluminum and metal cans, and glass and plastic bottles and jars.
- (e) Each *recycling* receptacle shall be clearly identified as a *recycling* receptacle and shall display a list of the types of *recyclable materials* which may be deposited into the *recycling* receptacle.
- (f) The *responsible person* shall ensure that the *recyclable materials* deposited into the *recycling* receptacles are delivered to a *recycling facility*. The *recycling facility* may be located at a landfill, but *recyclable materials* shall not be delivered to a landfill for *disposal*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0713 Exemptions

- (a) Six cubic yard exemption. *Multi-family residential facilities, commercial facilities, and mixed use facilities* which generate 6 cubic yards or less per week of *solid waste*, including *recyclable materials* mixed with *solid waste*, are exempt from the requirements of this Division. The 6 cubic yard threshold may be decreased at the discretion of the City Manager effective 90 days after the City has notified the public thereof by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City and posting a notice on the *Department's* website.
- (b) Other Exemptions. Other exemptions to some or all of the requirements of this Division may be granted at the discretion of the *Director's* designee. Applications for exemptions may be granted upon consideration of the following factors: available markets for *recyclable materials*, available space for *recycling* containers, alternative *recycling* efforts, and the amount and type of *solid waste* or *recyclable materials* generated. To be effective, an exemption must be in writing and signed by the *Director's* designee. An exemption may be revoked at any time at the discretion of the *Director's* designee if one or more of the factors justifying the exemption no longer exist, or other change in circumstances warrant revocation. Unless earlier revoked, an exemption shall be effective for a period of one year from the date it was granted. Subsequent applications for exemptions may be granted at the discretion of the *Director's* designee upon consideration of the factors listed in this section 66.0713(b).
- (c) Application for Exemption. Applications for an exemption shall be submitted to the *Department* in writing, on a form approved by the *Director*, together with a cost-recovery processing fee. The processing fee shall be reviewed annually by the City Manager and adjusted accordingly to ensure full cost-recovery for processing the application for exemption.
- (d) If the *Director's* designee denies an application for an exemption, the *Director's* designee shall notify the applicant in writing of the reasons for the denial. The denial of an application for an exemption or the revocation of an exemption may be appealed to the *Director*, whose decision shall be final.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

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§66.0714 Certified Recyclable Materials Collector

- (a) *Certified Recyclables Materials Collector.* A *Recyclable Materials Collector* may apply to the *Director* to become a *Certified Recyclable Materials Collector*. The certification will be valid for no more than two years after the date it is issued by the *Director*. The *Director* shall maintain a current list of *Certified Recyclable Materials Collectors* on the *Department's* website and in other educational materials published by the *Department*.
- (b) **Application Form and Fee.** Applicants for a *recyclable materials collector* certificate shall complete and submit to the *Director* a written application, on a form approved by the *Director*, together with a cost-recovery processing fee. The processing fee shall be reviewed annually by the City Manager and adjusted accordingly to ensure full cost-recovery for processing the application for certification. The application shall include, at a minimum, all of the following:
- (1) name, address, and telephone number of the applicant;
 - (2) name, address, and telephone number of an individual contact for the applicant;
 - (3) description of each vehicle the applicant will use to provide *recyclable materials collection* services within the City including, but not limited to make, model, serial or vehicle identification number, and license number;
 - (4) address where all vehicles and operating equipment used to provide *recyclable materials collection* services within the City will be stored and maintained;
 - (5) the applicant's agreement to defend, with counsel to be agreed upon by both parties, indemnify, and hold harmless, City and its agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to City's employees, agents, or officers which arise from, or are connected with, or are caused or claimed to be caused by acts or omissions of the applicant, or its agents, officers or employees, in the performance of the *recyclable materials collection* services, and all costs and expenses of investigating and defending against same; provided, however, that the applicant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, its agents, officers, or employees;

- (6) without limiting the indemnification obligation above, the applicant's agreement to obtain and maintain in full force and effect throughout the term of the *recyclable materials collector* certificate, and any extensions or modifications thereof, insurance coverage which meets or exceeds the requirements established by the *Director*; and
- (7) A written statement certifying that the applicant has reviewed and will comply with the requirements of this Division and in the certificate.
- (c) Insurance. The *Director*, in consultation with the City's Risk Management Department, shall establish minimum reasonable insurance requirements for *Certified Recyclable Materials Collectors*. Simultaneously with the submittal of its application, the applicant shall furnish proof satisfactory to the *Director* that the applicant has obtained the required insurance coverage. Annually on each anniversary of the issuance of the certificate, the applicant shall furnish proof satisfactory to the *Director* that the applicant maintains at least the minimum required insurance coverage.
- (d) Vehicles and Equipment. All vehicles, containers, and other equipment used to provide the *recyclable materials collection* services shall be kept in a clean and well-maintained condition.
- (e) Container Signage. Automatic lift containers, bins, roll-offs, and other containers used to *collect* and store *recyclable materials* pending *collection* shall be clearly identified as a *recyclable materials* container, shall display the name and phone number of the *Certified Recyclable Materials Collector* to whom the container belongs, and shall display a list of the *recyclable materials* which may be deposited into the container.
- (f) Container Features. Automatic lift containers, bins, roll-offs, and other containers used to *collect* and store *recyclable materials* pending *collection* shall be equipped with close-fitting lids and be leak-proof and rodent-proof.
- (g) Compliance with Law. *Certified Recyclable Materials Collectors* shall conduct all of their activities in compliance with all applicable federal, state, and local laws, regulations, ordinances, and requirements and shall be responsible for obtaining all applicable permits, licenses, certifications, and registrations.
- (h) Application Verification. The *Director* may independently verify any and all statements made or implied in the application or any accompanying documents. The *Director* may also request clarification from the applicant of any such statements or information.

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- (i) **Application Review.** In reviewing each application, the *Director* shall take into consideration all components of the application including, but not limited to:
- (1) the ability of the applicant to meet the requirements of this Division and the certificate;
 - (2) any history of criminal or civil violations that may compromise the public's interest; and
 - (3) the completeness, accuracy, and validity of the application.
- (j) **Application Determination.** After a reasonable review period, the *Director* shall grant or deny the application. If the *Director* fails to grant an application after thirty days from the receipt of a complete application, including accompanying documentation, the applicant may at the applicant's option deem the application denied. If the *Director* denies an application, the *Director* shall notify the applicant in writing of the reasons for the denial.
- (k) **Certificate Revocation.** The *Director* may revoke a certificate if the *Director* determines, after providing notice and an opportunity for a hearing, that a *Certified Recyclable Materials Collector* has violated the provisions in the certificate or any applicable law. If the *Director* revokes a certificate, the *Director* shall notify the applicant in writing of the reasons for the revocation.
- (l) **Appeal Upon Denial of Application or Revocation of Certificate.** Within thirty days after the issuance of a written notice of the denial of an application or the revocation of a certificate, the applicant or *Certified Recyclable Materials Collector* may request in writing to the *Director* that the City Manager review the *Director's* decision. Within thirty days of the Department's receipt of such a request, a meeting with the City Manager or designee shall be scheduled to review the items cited in the written notice. At that meeting, the applicant or *Certified Recyclable Materials Collector* may provide any additional information in support of their position. Within thirty days of such a meeting, the City Manager will issue a written decision on the application or revocation, which shall include the reasons for the decision. The City Manager's decision shall be final. A copy of the City Manager's written decision shall be provided to the applicant or *Certified Recyclable Materials Collector* and the *Director*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

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§66.0715 Self-Haul and Use of Non-Certified Recyclable Materials Collector

- (a) Nothing in this Division shall preclude any *person* from *self-hauling recyclable materials* generated by that *person* to a *recycling* facility.
- (b) The *responsible person* for a multi-family *residential facility, commercial facility, mixed use facility*, or association or organization described in section 66.0706(b), which *self-hauls solid waste* to a *disposal* facility shall comply with the *recycling* requirements in this Division applicable to that multi-family *residential facility, commercial facility, mixed use facility*, or association or organization described in section 66.0706(b).
- (c) Except for occupants of single family *residential facilities*, a *person* who *self-hauls solid waste* to a *disposal* facility and/or *self-hauls recyclable materials* to a *recycling* facility shall comply with the reporting requirements set forth in section 66.0711(a).
- (d) Except for occupants of single family *residential facilities*, a *person* who uses the services of a *recyclable materials collector*, which is neither a *Franchisee* nor a *Certified Recyclable Materials Collector*, to collect, transport, and deliver *recyclable materials* generated by that *person* to a *recycling* facility, shall comply with the reporting requirements set forth in section 66.0711(a).

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0716 Selling or Donating Recyclable Materials

Nothing in this Division shall preclude any *person* from selling or exchanging at fair market value, for reuse or *recycling*, source-separated *recyclable materials* generated by that *person* or from donating to another entity, for reuse or *recycling*, source-separated *recyclable materials* generated by that *person*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0717 Scavenging of Recyclable Materials Prohibited

- (a) No *person* other than the *person* under contract with the generator of the *recyclable materials* to collect the *recyclable materials*, shall remove or otherwise interfere with *recyclable materials* which have been placed at a designated *recycling* or *recyclable materials collection* location.

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- (b) No *person* shall be guilty of a violation of this section 66.0717 unless the *person* knew or reasonably should have known that the *recyclable materials* were set out for purposes of *collection* by another *person* authorized to *collect* the *recyclable materials*.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

§66.0718 Enforcement

- (a) Authority. The *Director* is authorized to administer and enforce the provisions of Chapter 6, Article 6, Division 7 of this Code. The *Director* or anyone designated by the *Director* to be an *enforcement official* may exercise any enforcement powers as provided in Chapter 1 of this Code.
- (b) Remedies. It is unlawful to violate any provision or requirement of Division 7. The failure to comply with any requirement of Division 7 constitutes a violation of Division 7. Each instance of a violation of Division 7 is a separate offense. Violations of the provisions or requirements of Division 7 may be prosecuted as misdemeanors subject to the penalties provided in section 12.0201 of this Code. The *Director* or designee may seek injunctive relief or civil penalties in the Superior Court pursuant to section 12.0202 of this Code or may pursue any administrative remedy provided in Chapter 1, Article 2, Divisions 3 through 10 inclusive, of this Code.
- (c) Remedies Cumulative. Remedies under section 66.0718 are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.
- (d) Strict liability. Except as otherwise set forth in section 66.0717, violations of Division 7 shall be treated as strict liability offenses regardless of intent.

(Added 11-20-2007 by O-19678 N.S.; effective 12-20-2007.)

APPENDIX A-4

**CITY CONSTRUCTION & DEMOLITION DEBRIS DIVERSION
DEPOSIT PROGRAM**

Article 6: Collection, Transportation and Disposal of Refuse and Solid Waste

Division 6:

Construction and Demolition Debris Diversion Deposit Program

(“Construction and Demolition Debris Diversion Deposit Program” added 10-10-2005 by O-19420 N.S.; effective until a certified recycling facility which accepts mixed construction and demolition debris is operating in the City at a 50% diversion rate.)

(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§66.0601 Findings

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only municipal landfill in the City. The Miramar Landfill currently is expected to close between 2011 and 2013. Preserving landfill capacity at the Miramar Landfill in order to extend the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.
- (b) The City has made and continues to make progress in meeting the waste *diversion* requirements imposed by AB 939, but additional efforts, particularly in the *diversion of construction and demolition debris*, will assist the City in continuing to meet the goal of *diverting* 50% of its waste from landfill *disposal*.
- (c) Studies show that approximately 35% of the waste generated in the City of San Diego delivered for *disposal* is *construction and demolition debris*, which could be *diverted* from landfill *disposal*.
- (d) Efforts by the City and the private sector to encourage voluntary *construction and demolition debris diversion* have not been as successful as the City had hoped and additional efforts are necessary to ensure continued compliance with AB 939 requirements.

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- (e) *Construction and demolition debris diversion* deposit programs in other jurisdictions in the State, similar to the one implemented by this Division, have proven successful in increasing *diversion of construction and demolition debris* and have been favorably received by the California Integrated Waste Management Board.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§66.0602 Purpose of Construction and Demolition Debris Diversion Deposit Program

The purpose of this Division is to establish the Construction and Demolition Debris Diversion Deposit Program. This program is intended to increase the *diversion of construction and demolition debris* from landfill *disposal*, conserve the capacity and extend the useful life of the Miramar Landfill, and avoid the potential financial and other consequences to the City of failing to remain in compliance with AB 939 requirements.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§66.0603 Definitions

All defined terms in this Division appear in *italics* and are found in sections 11.0210, 66.0102, and 113.0103 of this Code, except for the terms Building Permit and Demolition/Removal Permit which refer to those terms respectively as used in the Land Development Code and which, consistent with the Land Development Code, are not italicized in this Division. In addition, whenever the following words or phrases are used in this Division, they mean:

AB 939 means the California Integrated Waste Management Act, codified at California Public Resources Code sections 40000 et seq.

Certified recycling facility means a recycling, composting, materials recovery or reuse facility which accepts *construction and demolition debris* and which has been certified by the *Director* pursuant to rules promulgated by the *Director*.

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Construction and demolition debris means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, alteration, and/or demolition operations on pavements, houses, commercial buildings, and other *structures* and may include, but is not limited to, concrete, asphalt, wood, metals, bricks, dirt, rocks, and other inert waste.

Director means the Director of the Environmental Services Department (and its successor) or the designee of the Director of the Environmental Services Department (and its successor).

Disposal means the final deposition of *solid waste* at a permitted landfill.

Diversion or *Divert* means the reduction or elimination of *solid waste* from landfill *disposal*.

Hazardous waste has the same meaning as set forth in section 66.0102 of this Code.

Solid Waste means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including, but not limited to, garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, *construction and demolition debris*, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. *Solid Waste* does not include hazardous waste, hazardous substances or medical wastes, as those terms are defined in this Chapter 6 or in State or Federal law.

Waste Management Form Part I means the form prepared by the City Manager on which an *applicant* for a Building Permit or Demolition/Removal Permit shall provide information including, but not limited to, the types and amounts of *construction and demolition debris* the *applicant* anticipates the *development* will generate and the expected *construction and demolition debris diversion* the *applicant* expects to achieve for that *development*.

Waste Management Form Part II means the form prepared by the City Manager on which the *applicant* for a Building Permit or Demolition/Removal Permit shall provide information including, but not limited to, the name and address of the *person* to whom a deposit refund, if any, shall be issued, as well as documentary evidence in a form satisfactory to the *Director* demonstrating the *construction and demolition debris diversion* the *applicant* achieved for the *development*.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

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§66.0604 Submittal of Waste Management Form and Diversion Deposit

Beginning on the 45th day after the City has notified the public, in the manner described in section 66.0606(e), that a *certified recycling facility* which accepts mixed *construction and demolition debris* is operating at a 50% *diversion* rate, within 25 miles of the City Administration Building located at 202 “C” Street, San Diego, or beginning on July 1, 2008, whichever is later:

- (a) All *applicants* for a Building Permit or a Demolition/Removal Permit, including the City of San Diego, shall submit a properly completed *Waste Management Form Part I* with the Building Permit or Demolition/Removal Permit application, in accordance with the requirements set forth in the Land Development Manual; and
- (b) All *applicants*, including the City of San Diego, shall pay a refundable deposit at the time the Building Permit or Demolition/Removal Permit is issued; and
- (c) No Building Permit or Demolition/Removal Permit shall be issued unless the *applicant* has submitted a properly completed *Waste Management Form Part I* and paid the required deposit.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)
(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§66.0605 Establishment of Construction and Demolition Debris Diversion Deposits

The City Council shall establish by resolution a schedule of *construction and demolition debris diversion* deposits applicable to Building Permits and to Demolition/Removal Permits. The schedule shall be reviewed and adjusted periodically to ensure the purposes of this Division are met.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

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§66.0606 Entitlement to Refund of Diversion Deposit

- (a) An *applicant* is eligible for a refund of the deposit paid pursuant to Section 66.0604(b) provided the *applicant* submits the following directly to the *Director* within 180 days of the final inspection date for the *development* for which the deposit was paid:
- (1) A properly completed *Waste Management Form Part II*, in accordance with the requirements set forth in the Land Development Manual, which demonstrates the *construction and demolition debris diversion* the *applicant* achieved for the *development*.
 - (2) Evidence satisfactory to the *Director* that the *construction and demolition debris* generated by the *development* was *diverted*, at the applicable *diversion* rate set forth in Section 66.0606(d) below, by one or more of the following methods:
 - (a) on-site reuse of the *construction and demolition debris*;
 - (b) acceptance of the *construction and demolition debris* by a *certified recycling facility*; or
 - (c) other donation or reuse of the *construction and demolition debris* acceptable to the *Director*.

For a commercial *development*, such as a shopping center, with a master developer which manages solid waste generated by the *development* as a whole and which has multiple commercial or retail tenants who may construct their own tenant improvements, the evidence satisfactory to the *Director* described in section 66.0606(a)(2) may include receipts from a *certified recycling facility(ies)* showing the cumulative weight or volume of *construction and demolition debris diverted* from the *development* within the 30 calendar days prior to the final inspection date referred to in section 66.0606(a).

- (b) *Construction and demolition debris* shall be measured by weight or by volume, whichever is most accurate and practicable. To the extent practicable, all *construction and demolition debris* shall be weighed on a scale.
- (1) For *construction and demolition debris* which is weighed, the *applicant* shall use a scale which is in compliance with all federal, state, and local regulatory requirements for accuracy and maintenance of such scale.

- (2) For *construction and demolition debris* for which measurement by weight is not practicable, the *applicant* shall measure by volume and convert the volumetric measurements to weight using the standardized rates established in the City Construction and Demolition Debris Conversion Rate Tables.
 - (3) The *Director* reserves the right, when appropriate, to establish standard weights for various types of *construction and demolition debris* items based upon accepted average weights for such items. These standard weights shall be listed in the City Construction and Demolition Debris Conversion Rate Tables.
- (c) Refunds will be based on proof, satisfactory to the *Director*, of the *construction and demolition debris diversion* the *applicant* achieved for the *development* for which the deposit was paid.
- (d) If the *Director* determines the applicant is entitled to a refund, the amount of the refund shall be in the same proportion to the deposit paid by the *applicant* as the *diversion* rate achieved for the *development* is to the applicable *diversion* rate set forth below:
- (1) For Building Permits or Demolition/Removal Permits issued on or after the actual effective date of Section 66.0604 through and including 180 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall be 50% by weight of the total *construction and demolition debris* generated by the *development*; and
 - (2) For Building Permits or Demolition/Removal Permits issued after 180 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall be 75% by weight of the total *construction and demolition debris* generated by the *development*, provided that a *certified recycling facility* which accepts mixed *construction and demolition debris* is operating within 25 miles of the City Administration Building located at 202 "C" Street, San Diego, at a 75% *diversion* rate as of 181 calendar days from the actual effective date of Section 66.0604. If such a facility is not in operation as of 181 calendar days from the actual effective date of Section 66.0604, the *diversion* rate shall remain as set forth in Section 66.0606(d)(1) until 30 days after the City has notified the public that such a facility is available, at which time the *diversion* rate shall increase to 75% by weight of the total *construction and demolition debris* generated by the *development*

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- (e) Notice under this Division may be given by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City.
- (f) The *Director* shall determine whether a *certified recycling facility* has reached a certain *diversion* rate.
- (g) The *Director* shall refund a deposit paid or collected in error.
- (h) If a Building Permit or Demolition/Removal Permit, for which a deposit has been paid, is subsequently cancelled, abandoned or expires before work on the *development* has commenced, the *Director* shall refund the deposit paid by the *applicant* upon the *applicant's* submittal to the *Director* of satisfactory proof of the cancellation, abandonment or expiration of the permit.
- (i) The *Director* shall issue the refund to the *applicant* within the time established by City Council resolution.
- (j) In no event shall the refund be in an amount greater than the deposit paid by the *applicant*.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§66.0607 Certified Recycling Facilities

- (a) After at least one public hearing, the *Director* shall establish rules and regulations for certifying facilities inside or outside the City for purposes of this Division including, but not limited to, criteria for determining the *diversion* rate achieved by the facility and for verifying that the facility has obtained all applicable permits and licenses. The *Director* shall publish in the official City newspaper a notice of the adoption or amendment of these rules and regulations. The *Director* shall certify facilities in accordance with those rules and regulations.

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- (b) Within ten working days after publication of the notice adopting the proposed rules and regulations pursuant to Section 66.0607(a), any person in disagreement with the proposed rules and regulations may request in writing to the *Director* that proposed rules and regulations be considered by the City Manager or designee. The proposed rules and regulations shall be considered by the City Manager or designee, who shall issue a written decision respecting the proposed rules and regulations within thirty days of the *Director's* receipt of the written request. The decision of the City Manager or designee with respect to the rules and regulations shall be final.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§ 66.0608 Diversion Deposit Program Exemptions

- (a) The following activities, alone or in combination with one another, are exempt from this Division, except if the activity or activities is/are undertaken in conjunction with *development* which otherwise is subject to this Division:
- (1) Roofing projects that do not include the tear-off of the existing roof.
 - (2) Installation, replacement, or repair of a *retaining wall*.
 - (3) Installation, replacement, or repair of a carport, patio cover, balcony, trellis, or fireplace.
 - (4) Installation, replacement, or repair of a deck.
 - (5) Installation, replacement, or repair of a *fence*.
 - (6) Installation, replacement, or repair of a swimming pool or a spa.
 - (7) Installation, replacement, or repair of a pre-fabricated *sign* which does not require modification to the *structure* to which the *sign* is attached.
 - (8) Installation, replacement, or repair of storage racks.
 - (9) *Development* which requires only an electrical permit, only a plumbing permit, or only a mechanical permit.

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- (b) The following activities are exempt from this Division:
- (1) *Development* which is expected to generate only *hazardous waste* and/or *hazardous substances*.
 - (2) *Development* for which the *construction and demolition debris* deposit is less than \$200 as calculated by the Development Services Department or its successor.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§66.0609 Unrefunded Diversion Deposits and Accrued Interest

A deposit which is not refunded or claimed in accordance with this Division is the property of the City. For purposes of each and every deposit and all interest accrued thereon, the relationship between the *applicant* and the City is that of debtor-creditor, respectively. All interest accruing on each deposit is the property of the City, and the *applicant* shall have no claim upon the interest.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)

§66.0610 Use of Diversion Deposits and Accrued Interest

All deposits and accrued interest thereon shall be deposited into the Recycling Fund created pursuant to section 66.0135 of this Code. All deposits and accrued interest thereon shall be used solely and exclusively for the following purposes:

- (a) payment of deposit refunds, as determined by the *Director*;
- (b) payment of administrative costs of the Construction and Demolition Debris Diversion Program established by this Division;
- (c) payment of costs of programs designed to encourage *diversion* of *solid waste* from landfill *disposal*;
- (d) payment of costs of programs designed to develop or improve the infrastructure to *divert solid waste* from landfill *disposal*; or
- (e) payment of costs to develop or improve infrastructure to *divert solid waste* from landfill *disposal*.

(Added 10-10-2005 by O-19420 N.S; effective 1-17-2008.)