



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Debra Figone

**SUBJECT: CONSTRUCTION DEMOLITION
DIVERSION DEPOSIT PROGRAM
ORDINANCE AMENDMENT**

DATE: May 28, 2010

COUNCIL DISTRICT: City-wide

RECOMMENDATION

Approve an Ordinance to allow construction and demolition diversion deposits no longer eligible for refund to be transferred to the General Fund.

OUTCOME

Approval of the Ordinance would allow the City to transfer the construction and demolition diversion deposits no longer eligible for refund to the General Fund.

BACKGROUND

In 2000, the City Council approved the Construction and Demolition Diversion Deposit (CDDD) Program. This program was designed to increase the diversion rate in order to meet Integrated Waste Management Act of 1989 (AB 939) requirements to divert waste from the landfills. The City Council adopted Part 15 of Chapter 9.10 of the San José Municipal Code and established deposit rates for the CDDD Program. These rates were created to serve as an economic incentive for developers to divert construction waste to City-certified materials recovery or re-use facilities.

Construction demolition and diversion deposits are currently remitted by each person who applies for a building permit. Refunds are typically issued for projects which document that over 50 percent of the total waste generated, by weight, is diverted. The applicant must submit a written request for refunds within twelve months after the building permit is no longer active for any reason. Funds not returned to applicants are placed into reserves in the Integrated Waste Management Fund. Under the current Ordinance, these funds are used to cover the cost of administration of the CDDD Program and the cost of programs whose purpose is to develop or improve the infrastructure needed to divert from landfill disposal the waste from construction, demolition and alteration projects. The current estimated 2009-2010 balance of the CDDD Reserve in the Integrated Waste Management Fund is approximately \$8.6 million.

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ANALYSIS

As part of the recommendations included in the 2010-2011 Proposed Operating Budget, a transfer of \$2.4 million is proposed from the CDDD Reserve in the Integrated Waste Management Fund to the General Fund. This transfer will help balance the \$118.5 million General Fund budget gap and mitigate potential service reductions that would result if this revenue stream were not available. The remainder of the CDDD Reserve balance as well as CDDD deposits which become ineligible for refund in 2010-2011 are proposed to be allocated in a separate reserve for the Environmental Innovation Center.

The recommendations included in this memorandum amends the CDDD Ordinance to allow transfers of excess deposits to the General Fund for budget balancing purposes. It is currently estimated that approximately \$500,000 of ongoing unclaimed deposits may be generated annually in the Integrated Waste Management Fund. Through the annual budget process, the Administration will recommend allocation of these unclaimed reserves for the administration of the CDDD program or any other purpose as allowable in the Municipal Code. Since the amount of unclaimed deposits are dependant on development activity, the requirement for developers to divert over 50% of the construction, and a written requests for refunds, this revenue stream is volatile and the level of unfunded deposits in any given year is difficult to predict.

EVALUATION AND FOLLOW-UP

A second reading of the proposed Ordinance amendments is scheduled to return to the City Council on June 22, 2010.

POLICY ALTERNATIVES

Alternative #1: Do not amend the Municipal Code.

Pros: Taking no action at this time eliminates the need to amend the Ordinance and would preserve funds in the Integrated Waste Management Fund to cover the costs of administration and programs whose purpose is to develop or improve the infrastructure needed to divert from landfill disposal the waste from construction, demolition and alteration projects.

Cons: Not pursuing the Ordinance amendments would result in the need to identify alternative additional expenditure reductions that will have significant service level impacts in order to balance the General Fund for 2010-2011.

Reason for not recommending: Additional expenditure reductions that will have significant service level impacts would be required in the General Fund in order to balance the 2010-2011 Budget.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)

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- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The transfer of construction demolition and diversion deposits was included in the 2010-2011 Proposed Operating Budget released on May 3, 2010 and allowed for the public to comment on this budget proposal during the initial Budget Public Hearing on May 18, 2010.

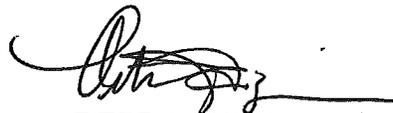
This memorandum will be posted on the City's website for the June 15, 2010 City Council agenda.

COORDINATION

This memorandum and relevant sections of the proposed ordinance were coordinated with the City Attorney's Office, the Environmental Services Department, and Planning, Building, and Code Enforcement Department.

CEQA

Not a Project, File No. PP10-068, Municipal Code revision with no potential environmental effects.


DEBRA FIGONE
City Manager

For questions please contact Jo Zientek, Deputy Director, Environmental Services Department at (408) 535-8557.