

## REPORT TO THE CITY COUNCIL

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**DATE:** August 5, 2014

**TITLE:** Ordinance Amending Municipal Code Chapter 8.08 and Resolution Establishing Performance Security Regarding Construction and Demolition Waste

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### RECOMMENDATION

- 1) Introduce for First Reading, an Ordinance of the City Council amending Chapter 8.08 to specify that the amount of the performance security will be established by resolution of the City Council; waive the reading of the Ordinance in its entirety and read by title only; and**
- 2) Adopt a resolution of the City Council setting forth the recommended higher performance security.**

### BACKGROUND

Construction and demolition waste ("C&D Waste") is the heaviest segment of the City's waste stream. The percentage of the waste stream varies widely depending upon the amount of construction activity occurring at any particular time.

The City was not in compliance with AB939, which is the law that sets forth the waste diversion mandates for the City. However, under the guidance of the California Integrated Waste Management Board, the City enacted an ordinance intended to divert C&D Waste from landfill disposal.

In late 2013, Desert Valley Disposal, Inc. ("DVD") approached the City about a new solid waste franchise agreement. The City Council appointed a City Council Subcommittee consisting of Mayor Pro Tem Russell Betts and Council Member Scott Matas. Former Interim City Manager Bob Adams provided staff support. Rick Wade, Chris Cunningham and Bob Kuznik represented DVD. A series of meetings were held and ultimately resulted in the City Council's approval of a new franchise agreement, amendments to Chapters 8.04 "Garbage and Rubbish" and Chapter 8.08 "Recycling and Diversion of Waste from Construction and Demolition" and adoption of a fee resolution.

One of several topics discussed in these meetings was the diversion of C&D Waste. It was established that although the City was just barely meeting state-mandated diversion requirements by the narrowest of margins, any increase in construction activity in which less than 50% of C&D Waste was diverted would almost certainly result in the City falling below the compliance level. A return to the intense construction activity of the mid-2000's without adequate diversion would result in a gross compliance failure. *(Note: The City former administration's refusal to implement diversion efforts in the early years of the State's mandated program resulted in the City receiving a compliance order and necessitated intense ongoing efforts to manage compliance shortfalls and avoid fines. It has just been in recent years that the City attained full compliance with the mandates of AB939.)*

After several meetings with DVD, the Subcommittee asked DVD to: (1) Evaluate the effectiveness of the City's Chapter 8.08 recycling and diversion program; and, (2) Identify ways in which the City could derive revenue from C&D Waste.

With respect to the effectiveness of the “performance security” system of Chapter 8.08, DVD reported the following to the Subcommittee: (1) DVD’s attempts to review C&D Permit records were inconclusive due to staff’s inability to produce documentation; (2) From interviews of City staff, DVD determined that in recent years those parties obtaining a C&D permit and posting the required security, did not seek a refund of the security when the project was completed; (3) City staff concluded that the amount of the security required by Chapter 8.08 was inconsequential to the permittee and not worth the effort of producing the documentation required to secure a refund; (4) Since the security refunds were not being sought, it was likely that C&D diversion was not occurring; and (5) The performance security system was ineffective.

With respect to the issue of the revenue produced from C&D activity, DVD recommended and the Subcommittee concurred that waste diverted from landfill disposal should be subject to the City’s Waste Diversion Fee (levied at a fixed \$8.50 per ton). *(Note, waste hauled by DVD and diverted from landfill disposal (including C&D waste) is subject to City Franchise Fees but is not subject to the City’s Waste Diversion Fee. This fee ‘exemption’ is passed on to customers as an economic incentive to divert waste from landfill disposal. This economic incentive is a part of the City’s waste diversion programs registered with CalRecycle and included in the City’s Annual Report to CalRecycle. An amendment to the approved list of programs will be processed by DVD on behalf of the City in 2015 for the 2014 reporting year.)* In addition, DVD reported that based upon a comparison of DVD records with reports prepared by disposal and diversion facilities, DVD hauls only a fraction of C&D Waste generated in the City; waste generators and builders may and do self-haul. Former Interim City Manager Bob Adams further recommended that the City’s Waste Diversion Fee be adjusted annually by the same change in CPI as the annual adjustment in DVD’s service fees, which the Subcommittee accepted. It was also generally recognized that any actions that increased the tonnage hauled by DVD would naturally produce additional (City Waste Diversion Fee) revenue to the City.

The parties brainstormed ways to make the Chapter 8.08’s C&D diversion program more effective and to further increase City Fee revenue (Franchise Fee and City Diversion Fee). Ideas such as allowing only DVD to haul all C&D waste were discussed and rejected as being objectionable to the building trades. However, it was the consensus of the parties that: (1) The performance security requirements should be increased; (2) C&D Waste generators should continue to have the option to haul materials themselves; and (3) A preferred hauler option should be offered that provides a streamlined option to avoid the security-reporting-refund requirements.

In light of the foregoing, the parties agreed that the City Council would be asked to consider amending Chapter 8.08 and take other necessary actions to: (1) remove the amount of the performance security from Chapter 8.08 and adopt it by Resolution for ease of management; (2) change the C&D required deposit to create a more meaningful incentive from the current 1% of valuation up to \$75,000 to 2% of valuation or \$3,000, whichever is greater; (3) Provide C&D permit holders an exemption from the deposit-reporting-refund requirements if they arranged and actively utilized the City’s preferred C&D Waste hauler; (4) Designate DVD as the City’s “preferred C&D Waste hauler,” to guarantee the City that a minimum of 50% of all C&D Waste hauled by DVD would be diverted from landfill disposal and communicate regularly with the City regarding actively participating projects; and (5) Provide an exemption from Chapter 8.08 deposit-reporting requirements for any C&D Waste generator electing to engage DVD to haul C&D Waste from a project.

To implement the above, the security deposit needs to be removed from Chapter 8.08 and instead the payment of 2% of valuation or \$3,000, whichever is greater, should be required via a resolution rather than an ordinance codified in the Municipal Code. In addition, the use of the term “permit fee” to describe this payment/deposit should be replaced with the term “performance security,” to avoid confusion and undermine the objectives of increasing C&D

Waste diversion and generating additional fee revenue to the City from the preferred hauler program.

**FISCAL IMPACT**

The proposed ordinance will generate additional fee revenue to the City. The amount will depend upon the volume of construction and demolition taking place within City limits.

**EXHIBIT(S)**

- 1) Proposed Ordinance Amending Chapter 8.08
- 2) Proposed Resolution Regarding Performance Security