



DATE: April 25, 2017

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT Introduction of an Ordinance Amending Chapter 5, Article 10 of the Hayward Municipal Code Relating to Construction and Demolition Debris Recycling Requirements

RECOMMENDATION

That Council introduces the attached Ordinance amending Chapter 5, Article 10 of the Hayward Municipal Code regulating the reduction and recycling of construction and demolition debris.

SUMMARY

This report provides an overview of Hayward's current Construction and Demolition (C&D) Debris Recycling Ordinance, adopted March 6, 2001, and a summary of the California Green Building Standards Code (CALGreen) as it pertains to recycling C&D debris in California. An updated version of CALGreen, effective January 1, 2017, includes requirements that supersede the City's ordinance. Staff presented potential City C&D ordinance amendments to the Council Sustainability Committee (CSC) that would enhance Hayward's Code to include recycling requirements beyond the current CALGreen code. The CSC recommended amending the Hayward's C&D Debris Recycling Ordinance so that: 1) It applies to projects as specified by the State Building Code, and that Hayward cover more projects by establishing a lower project valuation threshold and including all permitted demolitions; and 2) It requires a 65% recycling rate as specified by the State Building Code, but that the ordinance also require 100% recycling of asphalt, concrete, and similar debris, and require that 100% of all mixed C&D debris loads be taken to a third-party-verified recycling facility. The draft ordinance meets the CSC's recommendations.

BACKGROUND

The purpose of Hayward's current C&D Debris Recycling Ordinance is to divert C&D debris from the landfill. Since its adoption in 2001, the Ordinance accomplished this goal by requiring building projects valued over \$75,000 to recycle 100% of asphalt/concrete/similar materials, and to recycle 50% of all other C&D debris. The current ordinance, adopted March 6, 2001, can be found at:

https://www.municode.com/library/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH5SAHE_ART10CODEDEWARERERE).

The first CALGreen code became effective in California in 2008, seven years after Hayward's current ordinance. CALGreen Construction Waste Reduction, Disposal, and Recycling Section (Section 5.408) established a statewide C&D debris minimum recycling requirement of 50% for all jurisdictions. The CALGreen code is updated on a three-year cycle. The most recent update became effective on January 1, 2017, and requires a minimum 65% required recycling rate. This surpassed Hayward's 50% required recycling rate. For more information about the 2016 CALGreen code, effective January 1, 2017, visit:

<https://codes.iccsafe.org/public/document/details/toc/657>.

Staff reviewed Hayward's ordinance to determine whether the City should repeal the ordinance and default to CALGreen requirements, or update Hayward's ordinance to surpass CALGreen requirements. Staff gathered feedback on possible ordinance updates from a variety of stakeholders, including staff at the California Department of Resources Recycling and Recovery (CalRecycle), StopWaste, and local C&D debris recycling facilities. Staff compiled stakeholder comments, which were included in a report to the Council Sustainability Committee.

Council Sustainability Committee Recommendation – On November 14, 2016, the CSC reviewed several options for local ordinance enhancements. Below is a summary of the CSC report and recommendations. The full report is available at the following link:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2881990&GUID=96BF9520-30FB-4F0B-A088-54DD287C7853&Options=&Search>.

Recommended Threshold – A threshold determines which projects must comply with the ordinance. Below are the new thresholds recommended by the CSC for Hayward's C&D ordinance.

- Adopt the following 2016 CALGreen Thresholds (effective January 1, 2017):
 - Nonresidential – all permitted additions or alterations, all new construction, all demolitions associated with construction permits.
 - Residential – Additions or alterations that increase conditioned area/volume/size, all new construction permits, all demolitions associated with construction permits.
- In addition to CALGreen Thresholds, adopt the following local enhancements:
 - Monetary threshold of \$75,000 for residential projects (for projects that do not increase the conditioned area/volume/size).
 - Demolition-only permits.

Recommended Required Recycling Rate – The required recycling rate of a project specifies the percentage of waste or unused material generated by a project that must be recycled versus landfilled. Below is the recycling rate recommended by the CSC:

- Adopt the 2016 CALGreen Minimum Recycling Rate: 65% of C&D debris
- In addition to CALGreen Minimum Recycling Rate, adopt the following local enhancements:
 - 100% of asphalt, concrete, and similar readily recyclable materials must be recycled.
 - 100% of all mixed C&D loads must be taken to a third-party verified recycling facility with a certified recycling rate of 65% or higher.

Third-Party Verification – Processing of mixed C&D debris by a recycling facility that has third-party verified recycling rates allows the City to ensure that best management practices are followed and that the reported recycling rates are accurate. Local facilities such as the Davis Street Transfer Station in San Leandro and the Zanker Recycling Center in San Jose are certified by the Recycling Certification Institute (RCI), a national non-profit organization (<https://www.recyclingcertification.org/>). Approximately 75% of all C&D debris originating in Hayward is currently taken to these two facilities. StopWaste is leading regional efforts to promote the third-party verification of recycling facilities using RCI as the certification organization.

The U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) program currently offers credit for projects that take C&D debris to third-party verified facilities. RCI’s third-party verification methodology meets the requirements of the LEED definition. Furthermore, the updated CALGreen code effective January 1, 2017, identifies a voluntary measure for third-party-certified diversion rates.

The CSC recommended that similar language requiring the use of third-party-verified facilities be incorporated into the City’s ordinance. The committee supported the idea, but requested clarification regarding how a qualified third-party organization could establish itself and meet the standards set forth by the LEED Pilot Credit and the City. As described in Section 5-10.13 of the proposed ordinance (see Attachment II), a qualified third-party organization must follow a specific protocol. The protocol includes a requirement to adhere to guidelines for environmental claims and third-party oversight, including [ISO/IEC Guide 65](#) or [ISO 17065](#) and relevant portions of the [ISO 14000](#) family standards. This protocol also requires several rigorous performance standards for conducting verification of recycling rates. Third-party organizations that meet the standards outlined in Section 5-10.13 would qualify. The City would not maintain a list of qualified third-party organizations, but any new third-party organization would need to show compliance with Section 5-10.13 to be considered qualified.

DISCUSSION

On February 7, 2017, staff convened a stakeholder meeting to review the amendments presented to and recommended by the CSC. During the meeting, a representative for a local transfer facility expressed concern that there is only one third-party certification organization, allowing a monopoly on the certification process and potentially overwhelming the certification organization with an influx of requests. In response, a StopWaste representative indicated that other certification organizations meeting the requirements set forth by LEED

and Hayward could enter the market in the future. The StopWaste representative also indicated StopWaste would like to offer financial support to facilities not currently third-party verified. StopWaste would subsidize the first-year costs associated with becoming verified. The transfer facility representative expressed the need to work with contractors to ensure debris is sorted and handled appropriately before it arrives at the recycling facilities to ensure maximum recycling. City staff believes provisions in the proposed ordinance place sufficient responsibility on the contractor to ensure compliance.

Based on the February 7, 2017 meeting and subsequent discussions, StopWaste recommended that the City remove the draft municipal code provision requiring a third-party verified facility to have a verified recycling rate that meets or exceeds 65%. The recommendation was made based on projected declines, up to 15%, in the recycling rates of facilities due to commodities markets projections. The proposed ordinance would still require covered projects to achieve a 65% recycling rate. This requirement ensures contractors are responsible for ensuring compliance and encourages contractors to source-separate materials. Source-separating means contractors would sort different debris types (i.e. concrete, wood, metal) into different containers at the project site and separately take debris types to facilities specializing in recycling the material.

Staff incorporated recommendations from the CSC and from the February 7, 2017 stakeholder meeting into the proposed ordinance amendments, which were posted online and circulated to stakeholders. On March 22, 2017, staff held a second meeting with stakeholders to gather comments on the draft ordinance amendments. During this meeting, a representative from a local transfer station expressed concern that the certification process can take up to twelve months, and facilities making a good-faith effort to become certified should be allowed some leeway. In response, staff added a definition for a “Provisional Facility” to the proposed ordinance. A Provisional Facility will be eligible to receive mixed C&D loads and allowed up to twelve months from the date of registration to become certified. To begin the certification process with RCI, the facility must first register with the program. Registration can be accomplished within a few days, so facilities not currently certified may continue receiving loads as a Provisional Facility upon the effective date of the ordinance. If a facility does not achieve certification within twelve months of registration, it will lose its designation as a Provisional Facility and no longer be eligible to receive mixed C&D loads as directed by the City’s ordinance.

Environmental Services and Building Division staff have collaborated to ensure the new requirements would allow for streamlined review of building permits. Staff is currently working to utilize online debris recycling tracking software to replace the current process, which primarily relies on hard copy documentation and in-person visits to City Hall for approval of paperwork.

The tracked changes version of the municipal code amendments can be viewed at the following link: www.hayward-ca.gov/cdrecycling.

ENVIRONMENTAL REVIEW

This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14 of the California Code of Regulations) because there is no possibility that the ordinance will have a significant effect on the environment. The proposed amendments strengthen the City's existing recycling requirements for C&D debris. This ordinance would also qualify as exempt pursuant to Section 15378(b)(3) of the CEQA Guidelines as the term "project" does not include organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

ECONOMIC IMPACT

Increasing the C&D debris recycling rate requirement may result in a change to the debris recycling procedures by contractors working within the City. These changes may have some nominal cost implications as contractors will be required to implement better sorting procedures for C&D debris or establish other means of ensuring a higher recycling rate.

FISCAL IMPACT

Amendments to the ordinance are anticipated to have a minimal impact on staff time. Any additional review time associated with the ordinance amendments would be covered by development review fees already collected as part of the permit review process.

SUSTAINABILITY FEATURES

A C&D ordinance update would be directly in line with General Plan Policy PFS-7.12, Construction and Demolition Waste Recycling, which states,

The City shall require demolition, remodeling and major new development projects to salvage or recycle asphalt and concrete and all other nonhazardous construction and demolition materials to the maximum extent practicable.

PUBLIC CONTACT

As noted above, staff held a stakeholder engagement meeting the evening of February 7, 2017. Staff invited more than 2,700 stakeholders to attend the meeting, including general contractors with active business licenses with the City, regional recycling facilities, local Alameda County jurisdictions, and other affected parties. Ten individuals attended the meeting, representing primarily local recycling facilities and local jurisdictions. During this meeting, the ordinance updates recommended by the Council Sustainability Committee were presented and discussed.

Attendees at the February 7 meeting requested a second meeting to review and discuss the proposed ordinance language. This meeting occurred on March 22, 2017 and was attended by representatives from two local transfer stations and a representative from StopWaste.

Following the March 22 meeting, staff further revised the proposed ordinance amendments and posted them online for public review.

Public notice regarding the proposed amended ordinance is scheduled to be published in the *Daily Review* on April 28, 2017.

NEXT STEPS

If approved, the ordinance will be brought back for adoption at a subsequent Council meeting. Upon Council adoption, staff will update informational materials for building permit applicants and contractors.

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Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:



Kelly McAdoo, City Manager