



**CIWMB
C&D ORDINANCE
WORKSHOP**

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REGULATION V. AGREEMENT

- 1. Examples of regulation:** ordinances, code provisions, permit conditions, license requirements. Compliance is mandated.
- 2. Examples of agreement:** franchise agreement, service contract. Execution is consensual. (Forms of agreement are developed in stakeholders' meetings.)

Why enter into into C&D agreements instead of adopting a C&D ordinance?

1. There are less C&D haulers than demo and building permit applicants, so hauler agreement **administration is less time consuming** than permit applicant plan review and diversion corroboration.

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2. C&D collection, recycling and disposal is the **core business of haulers**. It is only incidental to developers' and contractors' business. (And often subcontracted.)

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3. Use carrots rather than sticks: **financial diversion incentives** for surpassing contractual performance rather than disincentives (bond forfeiture, fines and penalties) for violating terms of ordinance.

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4. Local governments can **designate C&D processing facilities** in consensual agreements, but not by unilateral regulation. (*Carbone.*)
Use of designated processing facility can replace diversion tonnage reporting, calculation and corroboration.

Franchise agreement v. service contract

In a **franchise agreement** the local government grants a franchisee the non/semi/exclusive right to conduct business in consideration of franchise fee payment. .

Franchise agreement v. service contract

If the local government wants to designate a processing facility, consider a **service contract**. The local government arguably remains a “market participant” for purposes of the Commerce Clause. It can charge fees under PRC 40059 or 41900 rather than franchise fees.



Require permit applicants to use franchised / contracted C&D haulers.

Consider self-haulers' (such as roofers) exception, subject to diversion substantiation.

How are C&D agreements developed and procured?

Local governments hold workshops and meetings with the haulers to review-and-develop contractual terms; they solicit haulers' comments on agreement terms.

A condition of a C&D haul permit (or a business license) is execution of C&D agreement.

Example local governments that have C&D contract diversion requirements.

La Canada Flintridge (**non-exclusive**, open market)

Hawthorne (**semi-exclusive**)

Monterey County (**exclusive** with self-haul exception)