

CITY COUNCIL ORDINANCE NO. 07-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE ADDING TITLE 6, DIVISION 7, CHAPTER 9 RELATING TO THE DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE TO THE MUNICIPAL CODE, AND AMENDING TITLE 6, DIVISION 7, CHAPTER 2 OF THE MUNICIPAL CODE BY ADDING SECTION 6-7-204 RELATING TO UNAUTHORIZED BINS

WHEREAS, under California law as embodied in the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq., hereafter "AB939") the City of Irvine ("City") is required to prepare, adopt and implement source reduction and recycling plans to reach landfill diversion goals, to regulate the volume of waste materials going to landfills and to otherwise remain in compliance with AB939;

WHEREAS, in order to meet these mandates the City must continue to promote the reduction of solid waste, reduce the stream of solid waste going to landfills, and implement appropriate measures to deter unauthorized waste haulers from operating in the City and delivering waste to landfills;

WHEREAS, the City Council of the City has adopted Resolution No. 07-95 supporting a "Zero Waste California" and adopted Zero Waste as a long-term goal in order to eliminate waste and pollution in the manufacture, use, storage and recycling of materials;

WHEREAS, waste from construction, demolition, and renovation of buildings represents a significant portion of the volume of waste presently coming from the City of Irvine and much of this waste is suitable for recycling and reuse;

WHEREAS, the City's commitment to the reduction of waste includes the establishment of programs for recycling and salvaging of construction and demolition waste;

WHEREAS, certain types of projects are exempt from these requirements;

NOW, THEREFORE, the City Council of the City of Irvine does ORDAIN as follows:

SECTION 1. Chapter 9, addressing the diversion of construction and demolition waste from landfills, is hereby added to Title 6, Division 7 of the City of Irvine Municipal Code to read as follows:

CHAPTER 9. RECYCLING AND DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE

6-7-901. Definitions.

The following terms as used in this Chapter shall have the respective meanings set forth herein:

Applicant. Any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity or person whatsoever who applies to the City for the applicable permits to undertake any construction, demolition, renovation, or similar operations on a project within the City.

Construction. The building of any facility, structure, wall, fence, or paving, or any portion thereof.

Construction and Demolition Debris. Excess or discarded building materials, packaging, rubble, and plant debris resulting from construction, demolition, renovation, or similar operations on pavements, houses, commercial buildings and other structures.

Covered Project. Those projects that qualify as Covered Projects pursuant to Section 6-7-903.

Deconstruction. The selective dismantling or removal and salvaging of reusable materials, including but not limited to appliances, fixtures, windows, and other components, from buildings or other structures prior to their demolition.

Demolition. The razing, tearing down, or wrecking of any facility, structure, wall, fence, or paving, whether in whole or in part, whether interior or exterior.

Director of Public Works. The City of Irvine Director of Public Works or his or her designee.

Diversion Requirements. The percentage of construction and demolition debris for each project that must be diverted from landfills pursuant to Section 6-7-902.

Material Recovery Facility. A processing facility permitted by the State of California where solid waste and/or recyclable materials are sorted or separated, by hand or by use of machinery, for the purpose of recycling, reuse, and/or composting.

Non-Covered Project. Those projects that do not qualify as Covered Projects pursuant to Section 6-7-903.

Project. Any activity requiring an approval from the City to undertake construction, demolition, renovation, or similar operations within the City.

Recycling. For purposes of this Division, "recycling" shall have the same meaning as set forth in Public Resources Code Section 40180, as amended from time to time.

Renovation. Any change, addition, alteration or modification to an existing facility, structure, wall, fence, or paving, including any tenant improvements to an existing facility or structure.

Reuse. The use, in the same or similar form as it was produced, of a material which might otherwise be discarded. By way of example, "reuse" shall include but not be limited to the sale or donation of salvaged materials to an end user, the sale or donation of construction and demolition debris to an end user, and the use of construction and demolition debris on-site as part of the same project.

Waste Diversion. The diversion of solid waste; in accordance with all applicable federal, state and local requirements, from disposal at solid waste landfills or transformation facilities through recycling, reuse or composting. Where used in this Chapter, the words "diversion" and "divert" shall refer to waste diversion.

Waste Diversion Fee Deposit. A fee deposited with the City pursuant to Section 6-7-909.

Waste Management Plan (WMP). A plan submitted by an Applicant and approved by the Director of Public Works pursuant to Section 6-7-908, which plan sets forth the processes and procedures for ensuring project compliance with this Chapter.

6-7-902. Diversion Requirements.

A. At least 75% of all concrete and asphalt construction and demolition debris and 50% of all other construction and demolition debris generated by any Covered Project shall be delivered to a material recovery facility, with the intention that such material be recycled, or otherwise diverted from landfills through direct delivery of such materials to brokers or end-users, through on-site reuse, or through any other diversion method(s) specified in an approved Waste Management Plan. When calculating diversion amounts pursuant to this Section, "all other construction and demolition debris" shall include fixtures, appliances, and other similar items. All Covered Projects are subject to Section 6-7-201 regarding use of City authorized solid waste haulers.

B. Each Applicant for a Covered Project shall meet the diversion requirements of this Section unless the Applicant is granted an exemption pursuant to this Chapter, in which case the diversion requirement shall be the

maximum diversion rates feasible (the “lower alternate diversion rates”) as established in writing by the Director of Public Works in his or her sole discretion.

6-7-903. Thresholds for Covered Projects.

- A. Covered Project shall mean any of the following projects
 1. All projects involving residential development of more than one residential unit;
 2. All projects involving new non-residential development of at least one structure with a project area of 5,000 square feet or greater;
 3. All projects involving non-residential demolition and/or renovation of 10,000 square feet or greater of project area.

6-7-904. Non-Covered Projects.

Applicants for Non-Covered Projects are encouraged to divert construction and demolition debris to an extent and in a manner consistent with the diversion requirements of this Chapter. All Non-Covered Projects are subject to Section 6-7-201 regarding use of City authorized solid waste haulers.

6-7-905. City-Sponsored Projects.

A. City-sponsored construction, demolition or renovation activities that involve 5,000 square feet or greater of project area shall divert construction and demolition debris in a manner consistent with this Chapter to the extent necessary to meet or exceed the diversion requirements of Section 6-7-902. For such City-sponsored projects, a written Waste Management Plan, in a form approved by the City, must be submitted to and approved by the Director of Public Works prior to the commencement of the subject construction, demolition, or renovation activities.

B. City-sponsored construction, demolition and renovation activities that involve less than 5,000 square feet of project area are not required, but shall be encouraged, to divert construction and demolition debris to an extent and in a manner consistent with the diversion requirements of this Chapter.

6-7-906. Deconstruction Requirement.

In order to ensure the diversion of reusable and/or recyclable fixtures, appliances, and other similar items from every demolition or renovation project, no demolition may take place until the Applicant for a Covered Project has demonstrated through documentation submitted to and approved by the Director of Public Works that deconstruction activities will take place prior to demolition.

At a minimum, such documentation shall identify the name of the party that will conduct the deconstruction activity and the dates or time period when such activity is anticipated to occur. Reusable materials salvaged and diverted through the deconstruction of any Covered Project shall count towards the diversion requirements of Section 6-7-902 if such materials are included in the WMP and in the reporting documentation required by Section 6-7-911.

6-7-907. Waste Management Plan and Waste Diversion Fee Deposit Exemptions.

A Waste Management Plan and a Waste Diversion Fee Deposit shall not be required for the following:

- A. Activities that do not qualify as projects under this Chapter;
- B. Roofing projects that do not include the tear-off of existing roof;
- C. Work that requires only a plumbing, electrical, or mechanical permit;
- D. Seismic retrofits;
- E. Emergency demolition required to protect the public health and safety; and
- F. Projects that involve single residential units.

6-7-908. Waste Management Plan.

A. The Applicant for a Covered Project shall submit a WMP to the City, in a form approved by the City, and receive express written approval of the WMP from the Director of Public Works, prior to beginning any construction, demolition, or renovation activities that generate solid waste.

B. The Applicant shall submit its completed, signed and dated WMP to the City during the construction, demolition, and/or similar permit application process(es). Approval of the WMP by the Director of Public Works shall be a condition precedent to the issuance of any building or demolition permit for all

projects that require a WMP under this Chapter. At a minimum, an approved WMP shall contain the following:

1. Proposed start and end date for the project;
2. Description of deconstruction efforts to be made;

3. Estimated weight of project waste to be generated by material type;
4. Maximum weight of such materials that can feasibly be diverted via reuse or recycling by material type;
5. City-authorized vendor(s) that the Applicant proposes to use to haul the materials;
6. Name and location of facility or facilities the materials will be hauled to, and their expected diversion rates by material type;
7. Estimated weight of construction and demolition debris that will be disposed of in a landfill;
8. Anticipated weight of waste to be landfilled per week during the course of the project. The anticipated per week weight shall not be a per week average for the entire length of the project but shall be an estimate of waste to be landfilled during each week of the project should the project proceed according to the Applicant's schedule.

If necessary to estimate the weight of materials identified in the WMP, the Applicant may use standardized volume to weight conversion rates and methodologies approved by the Director of Public Works. If the Applicant calculates the projected feasible diversion amounts as described above, and finds the amounts do not meet the diversion requirements, the Applicant must then submit documentation supporting and justifying a lower alternate diversion rates. If this documentation is not included, the WMP shall be deemed incomplete.

C. The Director of Public Works shall only approve a WMP if he or she determines that all of the following conditions have been met:

1. The WMP provides all of the required information set forth in this Section, and any other requested information deemed necessary by the Director of Public Works;
2. The WMP indicates that at least the required percentage of each type of construction and demolition debris generated by the project, as set forth in Section 6-7-902, or lower alternate diversion rates as justified in the submitted WMP and approved in writing by the Director of Public Works, shall be diverted; and
3. The Applicant has submitted an appropriate Waste Diversion Fee Deposit for the project in accordance with Section 6-7-909.

D. Upon approval of the Director of Public Works, a Master Waste Management Plan may be submitted for multiple tenant improvement Covered

Projects that will be completed during a single calendar year. The information in the Master Waste Management Plan must conform to the requirements contained in Section B, and must be presented for each individual Covered Project included in the Master Waste Management Plan.

E. If the Director of Public Works determines that the WMP is incomplete or fails to indicate that at least the required percentages (or approved lower alternate diversion rates) of all construction and demolition debris generated by the project will be diverted, he or she shall either:

1. Return the WMP to the Applicant marked "Disapproved," including a statement of reasons for disapproval; or
2. Return the WMP to the Applicant marked "Further Explanation Required," including a statement of necessary information or explanation.

F. If during the course of a Covered Project the Applicant determines based on new or previously unknown or undiscovered conditions that he or she will be unable to meet the required diversion percentages (or approved lower alternate diversion rates), the Applicant may submit a revised WMP to the Director of Public Works including documentation supporting and justifying lower alternate diversion rates. The Director of Public Works, in his or her sole discretion, may approve or reject the revised WMP and the lower alternate diversion rates.

6-7-909. Waste Diversion Fee Deposit Required.

A. As a condition precedent to the issuance of any construction, demolition, or similar permit for a Covered Project, the Applicant shall post a deposit (in the form of cash, letter of credit, money order, bond, or other method of payment acceptable to the Director of Public Works) with the City in the amount of \$1.00 per square foot of building area related to Covered Project that will be constructed, demolished, or renovated. In no case shall the required deposit exceed \$50,000 for any single Covered Project. Credit cards shall not be accepted by the City for payment of such deposit. The deposit shall be returned in total to the Applicant, promptly and without interest, at the conclusion of the project and upon the Applicant presenting proof satisfactory to the Director of Public Works that no less than the required percentages (or approved lower alternate diversion rates) of construction and demolition debris generated by the Covered Project have been recycled, reused or otherwise diverted from landfills to the extent indicated in the approved WMP. If lesser percentages of construction and demolition debris tonnage than required were diverted, the deposit shall be forfeited entirely to the City by the Applicant. Failure to comply with any terms of this Division may result, at the Director of Public Works' sole discretion, in the Applicant's forfeiture of the Waste Diversion Fee Deposit.

B. Certificates of Occupancy on a project shall not be withheld due solely to the failure of a project to achieve the diversion requirements of the WMP.

C. The City may at anytime, by formal resolution of the City Council, modify the basis for calculation and amount of the required deposit.

6-7-910. On-site Practices.

During the term of the Covered Project, the Applicant shall divert the required percentage of waste and keep records of such activities in a form specified by the Director of Public Works. The Director of Public Works will evaluate and may monitor each Covered Project to determine the percentage of waste recycled or reused from the Covered Project. For Covered Projects involving both construction/renovation and demolition activities, diversion of materials from demolition activities shall be tracked and measured separately from diversion of materials from construction/renovation activities. To the maximum extent feasible, project waste shall be separated on-site if this practice increases diversion. For construction, demolition and/or renovation projects, on-site separation shall include, but not be limited to, salvageable materials (e.g., fixtures, appliances, and other similar items) and dimensional lumber, wallboard, concrete and corrugated cardboard.

6-7-911. Reporting.

A. Within 30 days following the completion of the demolition phase of a Covered Project, and again within 30 days following the completion of the construction and/or renovation phase of a Covered Project, the Applicant shall, as a condition precedent to receiving a refund of the Waste Diversion Fee Deposit described in Section 6-7-909, submit documentation demonstrating to the satisfaction of the Director of Public Works compliance with both:

1. The diversion requirements set forth in Section 6-7-902; and
2. The approved WMP for the project.

The documentation shall include (i) a copy of the approved WMP; (ii) actual waste tonnage supported by original or certified photocopies of receipts and weight tags or other records of measurement from recycling companies, deconstruction contractors, end users, and/or landfill and disposal companies; and (iii) any other documentation required in the approved WMP. Receipts and weight tags will be used to verify whether waste generated from the Covered Project has been or will be recycled, reused, or disposed. The Applicant shall make reasonable efforts to ensure that all designated recyclable and reusable waste is measured and recorded using the most accurate method of measurement available.

B. To the extent practical, all construction and demolition waste shall be weighed in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition waste for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the Applicant shall use standardized conversion rates and methodologies approved by the Director of Public Works.

C. If a Covered Project involves both demolition and renovation or construction, the report and documentation for the demolition phase of the project must be submitted and approved by the Director of Public Works prior to the issuance of a building permit for the construction or renovation phase of the project. Alternatively, the Applicant may submit a letter stating that no non-hazardous solid waste or recyclable materials were generated from the Covered Project, in which case this statement shall be subject to verification by the Director of Public Works. Any deposit posted pursuant to Section 6-7-909 of this Chapter shall be forfeited if the Applicant does not meet the timely reporting and other requirements of this Chapter.

Section 6-7-912. Appeals

A. If an Applicant is aggrieved by any decision of the Director of Public Works under this Chapter, the Applicant may appeal the decision to the City Council by filing with the City Clerk a statement addressed to the City Council setting forth the name and address of the person filing the appeal, the facts and circumstances regarding the Director of Public Works' decision, and the basis for the appeal. The appeal shall be accompanied by a fee as established by resolution of the City Council. The City Clerk shall present the appeal to the City Council at the next regular meeting of the City Council following the date of filing. The City Council at such meeting, or at such meeting to which the matter may be continued by the Council, shall hear and pass upon the appeal, and the decision of the Council thereupon shall be final and conclusive.

B. The right to appeal to the City Council shall terminate upon the expiration of 30 days following the decision of the Director of Public Works.

SECTION 2. Section 6-7-204, addressing unauthorized waste hauler bins, is hereby added to Title 6, Division 7, Chapter 2 of the City of Irvine Municipal Code to read as follows:

Section 6-7-204. Unauthorized Solid Waste Hauler Bins.

As a means to deter non-franchised or unauthorized solid waste haulers and other persons from placing, depositing, storing or using their bins in the City, and to more effectively regulate and monitor the amount of solid waste disposed of in landfills, the City shall have the authority to impound: (1) bins owned or leased by, or otherwise under the control of, non-franchised or unauthorized haulers and

other persons; and (2) bins which are not properly identified pursuant to Section 6-7-403. The City may impound such bins anywhere in the City using any means available and may deliver such bins to an impound facility of its choosing. The City shall arrange to have the solid waste present in such bins delivered to a material recovery facility, recycling facility, or other facility of its choosing. In order to retrieve such bins from impound, the owner or an authorized representative of the owner of said bins must first reimburse the City for any and all expenses the City incurs related to this enforcement action, including but not limited to disposal fees. The owner or authorized representative of the owner of said bins may then retrieve said bins from the impound facility operator after paying the operator any retrieval fees. In the City's sole discretion, the owner of said bins shall also be subject to any other penalty authorized by this Division.

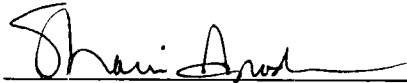
SECTION 3. The Municipal Code provisions set forth in this Ordinance shall take effect within 90-days of its approval by the City Council.

SECTION 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

PASSED AND ADOPTED by the City Council of the City of Irvine at an adjourned regular meeting held on the 27th day of November 2007.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on November 13th, 2007, and duly adopted at an adjourned regular meeting of the City Council of the City of Irvine held on the 27th day of November, 2007, by the following vote:

AYES: 5 COUNCILMEMBERS: Agran, Choi, Kang, Shea and Krom
NOES: 0 COUNCILMEMBERS: None
ABSENT: 0 COUNCILMEMBERS: None


CITY CLERK OF THE CITY OF IRVINE