



June 1, 2007

Nancy Wieben Stock
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Stock:

I am writing in response to the Grand Jury report regarding diversion of solid waste. Their report required responses from each city as to two issues.

First, with regards to issue F-6, the City of Laguna Beach has recently adopted an ordinance which requires construction material to be collected by our franchise operator unless the applicant prepares a waste diversion plan that would ensure that sufficient waste is diverted from the landfill. Attached is a copy of the ordinance which has been adopted by the City Council.

We have also been directed to respond to R-6. As indicated above, the City Council has already adopted measures to deal with this recommendation.

Sincerely,

Kenneth Frank
City Manager

Attachment

cc: Orange County Grand Jury
City Council
Director of Public Works

ORDINANCE NO. 1469

AN ORDINANCE OF THE CITY OF LAGUNA BEACH ADDING CHAPTER 7.19 –
CONSTRUCTION AND DEMOLITION WASTE DISPOSAL - TO THE MUNICIPAL
CODE.

THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES ORDAIN, as
follows:

SECTION 1. A Municipal Code Chapter 7.19 regarding construction and demolition
waste disposal is hereby added as follows:

Chapter 7.19

CONSTRUCTION AND DEMOLITION WASTE DISPOSAL

- 7.19.010 Definitions.
- 7.19.020 Covered projects.
- 7.19.030 Exempt Projects.
- 7.19.040 Diversion Required.
- 7.19.050 Submission of Waste Management Plan.
- 7.19.060 Use of the City's Franchise Waste Hauler.
- 7.19.070 Security Deposit.
- 7.19.080 Administrative fee.
- 7.19.090 Review of Waste Management Plan.
- 7.19.100 Return of Security Deposit.
- 7.19.110 Use of Security Deposit.
- 7.19.120 Infeasible exemption.
- 7.19.130 Appeal.
- 7.19.140 Violations.
- 7.19.150 Enforcement.

7.19.010 Definitions.

(1) "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the City for the applicable permits for "covered projects" to undertake any construction, demolition, or renovation project within the City.

(2) "Construction" means the construction of any facility or structure, or any portion thereof, including any tenant improvements to an existing facility or structure.

(3) "Construction and demolition debris" means used or discarded materials removed from the premises during construction, renovation, or demolition operations on any pavement, residential structure, commercial building, or other structure.

(4) "Conversion rate" means the rate set forth in the Materials Conversion Worksheet approved by the Director of Public Works for use in estimating the weight of materials identified in a Waste Management Plan.

(5) "Covered project" shall have the meaning set forth in Section 7.19.020 of this chapter.

(6) "Demolition" means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

(7) "Diversion requirement" means the diversion of at least fifty percent (50%) of the total construction and demolition debris generated by a covered project via reuse or recycling.

(8) "Divert" means to use material for any purpose other than disposal in a landfill.

(9) "Exempt project" shall have the meaning set forth in Section 7.19.030 of this chapter.

(10) "Project" means any activity that requires an application to obtain a building permit, demolition permit, Public Works permit, or any similar permit from the City.

(11) "Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

(12) "Renovation" means any alteration, addition, remodel, or modification in or to an existing structure.

(13) "Reuse" means further or repeated use of construction and demolition debris.

(14) "Salvage" means the controlled removal of construction and demolition debris from a permitted building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

(15) "Security deposit" means any cash, check or money order deposit submitted to the City pursuant to Section 7.19.070 of this chapter.

(16) "Waste Management Plan" means a completed Waste Management Plan form, approved by the Director of Public Works for the purpose of compliance with this chapter, submitted by the applicant, for a covered project.

(17) "Waste Management Plan Compliance Official" means the person or persons so appointed by the City Manager. (Ord. 1469, §1, 2007).

7.19.020 Covered projects.

(1) Any construction, demolition, or renovation project within the city that requires a building permit or Public Works permit and meets one or more of the following criteria shall be considered a "covered project," and shall be undertaken in compliance with this chapter:

(a) Every demolition project.

(b) The combined scope of the project includes the construction of at least one thousand (1,000) square feet of floor area of building, deck or pavement area; or any combination of building, deck, and pavement areas that exceeds one thousand (1,000) square feet of floor area.

(2) Concurrent permits at the same address shall be considered "one" project for the purposes of this chapter. (Ord. 1469, §1, 2007).

7.19.030 Exempt Projects.

No Waste Management Plan or security deposit shall be required for any of the following projects:

(1) Roofing projects that do not require the tear-off of the existing roof.

(2) The project is a new patio cover or deck.

(3) Projects for which only a plumbing, electrical, or mechanical permit, or any combination of them, is required.

(4) Installation of prefabricated patio enclosures and covers where no foundation or other structural building modifications are required.

(5) Installation of prefabricated accessories such as signs or antennas where no structural building modifications are required.

(6) Construction, renovation, or demolition work that the Building Official determines, based upon information provided by the applicant, will not generate more than one ton of construction or demolition waste.

(7) Immediate or emergency demolition or construction required to protect the public health, safety, or welfare, as determined by the Director of Public Works, the Director of Community Development, or their designee. (Ord. 1469, §1, 2007).

7.19.040 Diversion Required.

All covered projects shall reuse, recycle, or divert a minimum of fifty percent (50%) of construction and demolition debris, measured in tonnage. Applicants may dispose of any project-related construction and demolition debris in the following ways:

(1) Self-haul the construction and demolition debris to a facility and submit a Waste Management Plan as set forth in Section 7.19.050 of this chapter.

(2) Elect to use the City's franchise waste hauler roll-off bin as set forth in Section 7.19.060. (Ord. 1469, §1, 2007).

7.19.050 -- Submission of Waste Management Plan.

(1) Any applicant for a covered project that is not an exempt project under Section 7.19.030 shall complete and submit a Waste Management Plan on a Waste Management Plan form approved by the Director of Public Works for this purpose. The completed Waste Management Plan shall indicate all of the following:

(a) The estimated weight of project construction and demolition debris, by materials type, to be generated;

(b) The maximum weight of such construction and demolition materials that can feasibly be diverted via reuse or recycling;

(c) The approved facility that the applicant proposes to use to collect or receive that construction and demolition material; and

(d) The estimated weight of construction and demolition materials that will be landfilled.

(2) In estimating the weight of materials identified in the Waste Management Plan, the applicant may use the materials conversion worksheet approved by the Director of Public Works for this purpose.

(3) In preparing the Waste Management Plan, applicants for permits involving the removal of all or part of an existing structure shall, to the maximum extent feasible, make the materials generated thereby available for reuse or salvage prior to landfilling. Salvaged materials may be given or sold on the premises, or may be removed to reuse warehouse facilities for storage or sale. (Ord. 1469, §1, 2007).

7.19.060 Use of the City's Franchise Waste Hauler

Applicants who elect to use the City's franchise waste hauler roll-off bin for all project waste shall not be required to complete and submit a Waste Management Plan and shall not be required to pay the security deposit as specified in Section 7.19.070, and the administrative fee as specified in Section 7.19.080. At the time of building permit issuance, the applicant shall use the form approved by the Director of Public Works for this purpose to indicate that the City's

franchise waste hauler will be providing construction and demolition material collection services. (Ord. 1469, §1, 2007).

7.19.070 Security Deposit.

The applicant for any project that requires submission of a Waste Management Plan shall submit with the Waste Management Plan a security deposit to guarantee compliance with the diversion requirements of this chapter. The deposit must be payable to the City and must be in the form of cash, check, or cashier's check. The amount of the deposit for each category of covered projects set forth in section 7.19.20 will be established by resolution of the City Council. The Director of Public Works may, in the exercise of sound discretion, reduce the deposit for a covered project if it is determined that the amount of the required deposit is not commensurate with the weight of construction and demolition waste that is expected to be generated by the covered project. (Ord. 1469, §1, 2007).

7.19.080 Administrative Fee.

Except as provided below, prior to the City's issuance of any permit for a covered project that is not an exempt project, the applicant shall pay to the City a non-refundable fee for processing the applicant's Waste Management Plan. The administrative fee will be in an amount sufficient to cover all City expenses incurred in administering the program. The amount of the administrative fee shall be established by resolution of the City Council. Applicants who elect to use the City's franchise waste hauler roll-off bins for all project waste shall not be required to pay the processing fee set forth in this section. (Ord. 1469, §1, 2007).

7.19.090 Review of Waste Management Plan

(1) Notwithstanding any other provision of this chapter to the contrary, and except for those covered projects for which completion and submission of a Waste Management Plan is not required as set forth in Section 7.19.030, no permit shall be issued for any project requiring submission of a Waste Management Plan unless and until the Waste Management Plan Compliance Official has approved the applicant's Waste Management Plan. Approval shall not be required where an emergency demolition is required to protect public health or safety. The Waste Management Plan Compliance Official shall only approve a Waste Management Plan if he or she first determines that all of the following conditions have been met:

(a) The Waste Management Plan provides all of the information set forth in Section 7.19.050 of this chapter;

(b) The Waste Management Plan indicates that at least fifty percent (50%) of all construction and demolition debris generated by the project will be diverted;

(c) The applicant has submitted a security deposit in compliance with Section 7.19.70 of this chapter; and

(d) The applicant has submitted an appropriate administrative fee in compliance with Section 7.19.080 of this chapter.

If the Waste Management Plan Compliance Official determines that these four conditions have been met, he or she shall mark the Waste Management Plan "Approved," return a copy of the Waste Management Plan to the applicant and notify the Building Official that the Waste Management Plan has been approved.

(2) If the Waste Management Plan Compliance Official determines that the Waste Management Plan is incomplete or fails to satisfy one or more of the four conditions set forth in subsection (1) above, he or she shall either:

(a) Return the Waste Management Plan to the applicant within ten (10) working days, marked "Denied," including a statement of the reasons for denial, and so notify the Community Development Department; or

(b) Return the Waste Management Plan to the applicant within ten (10) working days marked "Further Explanation Required." (Ord. 1469, §1, 2007).

7.19.100 Return of Security Deposit.

(1) Within sixty (60) days after the completion of any project requiring submission of a security deposit, the applicant shall submit to the Waste Management Plan Compliance Official documentation that it has met the diversion requirement for the project. This documentation shall include all of the following:

(a) Receipts from the construction and demolition recycling facility that collected or received each material, showing the actual weight of that material;

(b) For those projects for which completion and submission of a Waste Management Plan is required by this chapter, a summary report approved by the Director of Public Works for this purpose adding the actual weight of each material diverted and landfilled; and

(c) Any additional information the applicant believes is relevant to determining its efforts to comply in good faith with this chapter.

(2) Applicants shall make reasonable efforts to ensure that all construction and demolition debris diverted or landfilled are measured and recorded using the most accurate method of measurement available. To the extent practical, all construction and demolition debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition debris 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 the materials conversion worksheet approved by the Director of Public Works for this purpose.

(3) The Waste Management Plan Compliance Official shall review the information submitted under subsection (1)(a) of this section and determine whether the applicant has complied with the diversion requirement, as follows:

(a) If the Waste Management Plan Compliance Official determines that the applicant has fully complied with the diversion requirement applicable to the project, he or she shall cause the full security deposit to be released to the applicant;

(b) If the Waste Management Plan Compliance Official determines that the diversion requirement has not been achieved, he or she shall determine, on a case-by-case basis, whether the applicant has made a good faith effort to comply with this chapter. In making this determination, the Waste Management Plan Compliance Official shall consider the availability of markets for the construction and demolition debris landfilled, the size of the project, and the documented efforts of the applicant to divert construction and demolition debris. If the Waste Management Plan Compliance Official determines that the applicant has made a good faith effort to comply with this chapter, he or she shall release the security deposit, or a portion thereof, to the applicant. Any portion of the construction and demolition performance security deposit not released to the applicant shall be forfeited to the City, and shall be used for the purposes of promoting recycling within the City;

(c) If the Waste Management Plan Compliance Official determines that the applicant has not made a good faith effort to comply with this chapter, or if the applicant fails to submit the documentation required by subsection (1)(a) of this section within the required time period, then the security deposit shall be forfeited to the City. Further administrative penalties as defined in Section 7.19.140 shall also be applied. (Ord. 1469, §1, 2007).

7.19.110 Use of Security Deposit

All forfeited security deposits and penalties shall be segregated and used only for the following:

(1) Administrative costs of the construction and demolition waste recycling program which are not covered by the application fee established pursuant to this article.

(2) Programs to divert solid waste from landfill disposal.

(3) Programs intended to develop or improve the infrastructure needed to divert solid waste from landfill disposal. (Ord. 1469, §1, 2007).

7.19.120 Infeasible Exemption.

(1) If an applicant for a covered project experiences unique circumstances that the applicant believes make it infeasible to comply with the diversion requirement, the applicant may, by separate letter titled "Request for Infeasible Exemption" that is addressed to the Waste Management Plan Compliance Official apply for an exemption at the time that he or she submits the Waste Management Plan required under Section 7.19.050 of this chapter. The applicant shall indicate in the request for exemption letter the maximum rate of diversion he or she believes is feasible for each material and the specific circumstances that he or she believes make it infeasible to comply with the diversion requirement.

(2) The Waste Management Plan Compliance Official shall review the information supplied by the applicant and may consider possible ways of meeting the diversion requirement. Based on the information supplied by the applicant, and if appropriate, in consultation with the

City's franchise solid waste hauler, the Waste Management Plan Compliance Official shall determine whether it is possible for the applicant to meet the diversion requirement.

(3) If the Waste Management Plan Compliance Official determines that it is infeasible for the applicant to meet the diversion requirement due to unique circumstances, he or she shall determine the maximum feasible diversion rate for each material and shall indicate this rate on the request for exemption letter submitted by the applicant. The Waste Management Plan Compliance Official shall return a copy of the request for exemption letter to the applicant marked "Approved for partial Exemption" and shall notify the Building Official that the applicant's request has been granted and the applicant's revised Waste Management Plan, (if applicable), has been approved.

(4) If the Waste Management Plan Compliance Official determines that it is possible for the applicant to meet the diversion requirement, he or she shall so return a copy of the request for exemption letter to the applicant marked "Denied for Infeasible Exemption."

(5) Any applicant who is required pursuant to Section 7.19.050 to prepare and submit a Waste Management Plan and whose request for an infeasible exemption is denied shall have thirty (30) days to resubmit a Waste Management Plan form in full compliance with Section 7.19.050 of this chapter. If the applicant fails to resubmit the Waste Management Plan, or if the resubmitted Waste Management Plan does not comply with Section 7.19.050 of this chapter, then the Waste Management Plan Compliance Official shall deny the Waste Management Plan in accordance with Section 7.19.080 of this chapter. Building permits shall not be issued without an approved Waste Management Plan. (Ord. 1469, §1, 2007).

7.19.130 Appeal.

The applicant or any interested person may appeal to the Building Official the determination of the Waste Management Plan Compliance Official. Notice of any appeal from the determination of the Waste Management Plan Compliance Official must be filed with the Building Official within ten (10) days after the date that such determination is made. The decision of the Building Official upon such appeal shall be final and shall not be appealable to the City Council or to any other City body or official.

Determinations subject to appeal include, but are not limited to: (1) the granting or denial of an infeasible exemption; (2) whether the applicant has acted in good faith; and (3) the amount of the construction and demolition performance security deposit to be released. (Ord. 1469, §1, 2007).

7.19.140 Violations.

(1) Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

(2) Violation of any provision of this chapter shall constitute an infraction punishable by a fine as outlined in Section 1.04.025 of the Laguna Beach Municipal Code. Where the

violation is the failure to achieve the diversion requirement applicable to the project and the construction and demolition materials from the project have already been landfilled, the violation shall be deemed to have ceased after a period of ten (10) days. The City shall recover costs and attorneys' fees incurred in connection with enforcement of this article. (Ord. 1469, §1, 2007).

7.19.150 Enforcement.


The City Manager or the Director of Public Works, or their designee(s), shall have the authority to enforce the provisions of this chapter. (Ord. 1469, §1, 2007).

ADOPTED this 13th day of February 2007.



Toni Iseman, Mayor

ATTEST:




City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of said City held on January 30, 2007, and was passed and adopted at the regular meeting of the City Council held on February 13, 2007, by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Schneider, Kinsman, Egly, Iseman

NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

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