

ORDINANCE NO. 03-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING TITLE 6 "HEALTH AND SANITATION" OF THE DANA POINT MUNICIPAL CODE TO ESTABLISH THE CONSTRUCTION AND DEMOLITION WASTE RECYCLING PROGRAM

WHEREAS, the California Integrated Waste Management Act of 1989 (Assembly Bill 939) requires that each city and county in the state reduce material landfilled by fifty percent (50%) by end of the year 2000; and

WHEREAS, pursuant to AB 939 each city and county in California, including the City of Dana Point (City), could face fines up to \$10,000 a day for not meeting the above-mandated goal; and

WHEREAS, the State of California enacted Senate Bill 1374, legislation requiring cities such as Dana Point to adopt regulations to mandate the diversion of construction and demolition waste, at a diversion rate of 50% to 75%, in order to remain in compliance with AB 939 and submit appropriate findings summarizing its progress of diverting these materials from disposal; and

WHEREAS, if the City does not adopt an ordinance mandating the diversion of construction and demolition waste, it will be required, pursuant to SB 1374, to adopt a model ordinance prepared by the State that may not reflect the unique needs of the City; and

WHEREAS, the City has thus far only achieved a diversion rate of 31% and hence in order to demonstrate a good faith effort towards achieving AB 939's required diversion goal of 50% the City desires to implement the highest level of diversion contemplated by SB 1374, 75%, as the mandated diversion level for Construction and Demolition Debris in the City; and

WHEREAS, the volume of recyclable construction and demolition debris going to the landfills constitutes a threat to the public health, safety and welfare in that the available landfill capacity and sites are quickly diminishing; and

WHEREAS, the City Council of the City of Dana Point finds and determines that the public interest, health, safety and welfare will be best served if C&D Debris, including that which is self-hauled, is Diverted from landfill disposal for appropriate processing and that the Diversion be monitored by the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds as follows:

- A. Title 6, Chapter 6 of the City of Dana Point Municipal Code regulates the storage, removal, transportation and disposal of solid waste.
- B. The State of California through its California Waste Management Act of 1989, Assembly Bill 939 (AB 939), requires that each local jurisdiction in the State divert 50% of discarded materials from landfills by December 31, 2000.
- C. The City of Dana Point has not met its 50% diversion requirement within the timeframes required by AB 939 and hence applied for and received an extension of time to do so pursuant to AB 1066.
- D. In order to maintain its AB 1066 extension, both the terms of said extension and Senate Bill 1374 require the City to track Construction and Demolition Debris generated in the City, and to adopt an ordinance mandating the diversion of 50% to 75% of Construction and Demolition Debris generated within the City.
- E. Senate Bill 1374 (SB 1374) requires the CIWMB to adopt a model ordinance by March 1, 2004, and requires, by an unspecified date, local jurisdictions to adopt the model ordinance if the local jurisdiction does not have an ordinance already in place; and further, absent the adoption of this ordinance, the requirement to adopt a model ordinance would not best serve the interests of the City.

SECTION 2. ADDITION OF CHAPTER 6.12.

The City of Dana Point Municipal Code is hereby amended to add a new chapter to Title 6 "Health and Sanitation" as follows:

6.12.010 Declaration of Purpose.

The purpose of this chapter is to promote the recycling of Construction and Demolition Debris in order to protect the public health, safety and welfare and to meet the City's obligations under both AB 939 and SB 1374, and to meet the requirements of the three (3) year extension approved by the California Integrated Waste Management Board under the provisions of Public Resources Code Section 41820 (Senate Bill 1066).

6.12.020 Definitions.

For the purpose of this Chapter, the following definitions shall apply:

- A. "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 to undertake any construction, demolition, or renovation project within the City.
- B. "C&D Compliance Official" means the person designated by the City Manager who is authorized and responsible for implementing this chapter.
- C. "Construction" means the building, rehabilitation, remodeling, renovation or repair of any facility or structure or any portion thereof, including any tenant improvements to an existing facility or structure.
- D. "Construction and Demolition Debris" or "C&D Debris" means all waste building materials resulting from Construction or Demolition operations as defined in Title XIV, Division VII, Article IV, Section 17381, subdivision e, of the California Code of Regulations.
- E. "Covered Project" shall have the meaning set forth in Section 6.12.030 of this Chapter.
- F. "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.
- G. "Divert", "Diverted," or "Diversion" means to use material for any purpose other than disposal in a landfill or transformation facility.
- H. "Security Deposit" means the deposit required as security for performance for covered projects to ensure that the Applicant complies with the requirements of this Chapter.

6.12.030 Covered and Non-Covered Projects.

- A. Covered Projects: Except as otherwise set forth herein, all Construction and Demolition projects within the City requiring a building permit, demolition permit, or encroachment permit, are deemed to be Covered Projects for purposes of this Chapter. Concurrent permits at the same site shall be considered "one" Covered Project.
- B. Non-Covered Projects: The following shall not constitute Covered Projects for purposes of this Chapter:
 - (1) Construction or Demolition on residentially zoned premises when the scope thereof is less than 150 square feet.

- (2) The Construction on pools, spas, or retaining walls on residentially zoned premises.
- (3) Construction or Demolition on commercially zoned premises when the scope thereof is less than 250 square feet.
- (4) The Construction of retaining walls on commercially zoned premises.
- (5) The re-roofing of any residential or commercial structure that does not include the tear-off of an existing roof.

6.12.040 Minimum Construction and Demolition Diversion Requirements.

Every Applicant shall Divert from the landfills or disposal sites a minimum of seventy-five (75%), measured by tonnage, of all Construction or Demolition Debris generated as a result of any Covered Project.

6.12.050 Waste Reduction and Recycling Plan Required.

- A. Prior to issuance of a building, demolition or encroachment permit for any Covered Project, the Applicant shall complete and submit a Waste Reduction and Recycling Plan ("WRRP") to the C&D Compliance Official.
- B. The C&D Compliance Official is authorized to create guidelines setting forth the information to be included in a WRRP, as well as the form thereof. At a minimum, the WRRP shall delineate all of the following:
 - (1) The estimated weight of C&D Debris to be generated by the Covered Project, listed by material types; and
 - (2) The estimated weight of C&D Debris generated by the Covered Project to be Diverted, listed by material types; and
 - (3) The facility or facilities to which C&D Debris will be taken, listed by material types; and
 - (4) The estimated weight of C&D Debris generated by the Covered Project that will be landfilled, listed by material types.

6.12.060 Security Deposit Required.

Except as otherwise specified in this chapter, each applicant who applies for a building, demolition or encroachment permit for a Covered Project, shall remit a Security Deposit in the amount set forth by Resolution of the City Council. The Security Deposit shall be remitted at the same time the permit application is filed,

and shall be in the form of cash or cash equivalent such as a cashier's check or credit card payment to the City.

6.12.070 Review of WRRP.

- A Notwithstanding any other provision of this Chapter, no building or demolition permit shall be issued by the City for any Covered Project prior to approval of the WRRP by the C&D Compliance Official. Approval shall not be required if an emergency demolition is required to protect public health or safety.
- B The C&D Compliance Official shall approve a WRRP only if:
- (1) The WRRP provides all the information set forth in Section 6.12.050 and complies with all guidelines as may be established by the C&D Compliance Official; and,
 - (2) The Applicant has paid the Security Deposit required by Section 3.12.060.

6.12.080 Exemptions.

- A. Neither a Waste Reduction and Recycling Plan nor a Security Deposit shall be required for, and the provisions of this Chapter shall not apply to any otherwise Covered Project which meets one or more of the following criteria:
- (1) Work for which only a plumbing permit, only an electrical or only a mechanical permit is required.
 - (2) Seismic tie-down projects.
 - (3) Installation of pre-fabricated patio enclosures and covers where no foundation or other structural building modifications are required.
 - (4) Installation of pre-fabricated accessories such as signs or antennas where no structural building modifications are required.
 - (5) Other work that the C&D Compliance Official determines will not produce a significant quantity of construction or demolition waste.
 - (6) Projects less than 150 square feet in size.
 - (7) Projects which have a valuation of less than \$10,000.
 - (8) Roofing projects that do not include the tear-off of the existing roof.

- B. In order for an Applicant to receive an exemption from an otherwise Covered Project on the basis it falls within one of the exempt categories noted in subdivision A of this Section 6.12.080, the Applicant shall submit an application for exemption, stating the grounds for the requested exemption, to the C&D Compliance Official who shall grant the exemption request if he determines that the otherwise Covered Project meets one or more of the criteria set forth in subdivision A of this Section 6.12.080.

6.12.090 Summary Report Required.

- A. Within sixty (60) days following the completion of a Covered Project, the Applicant shall, as a condition precedent to release of the Applicant's Security Deposit, submit a Construction and Demolition Waste Recycling and Disposal Report Summary to the C&D Compliance Official, summarizing the Applicant's compliance with the requirements of its Waste Reduction and Recycling Plan.
- B. The C&D Compliance Official is authorized to create guidelines setting forth the information to be included in a Construction and Demolition Waste Recycling and Disposal Report Summary, as well as the form thereof. At a minimum, the Construction and Demolition Waste Recycling and Disposal Report Summary shall contain the following:
- (1) The actual weight of C&D Debris generated by the Covered Project that was Diverted, by material type, the Diversion method utilized, and the actual weight of C&D Debris that was not Diverted, supported by evidence deemed reasonably satisfactory by the C&D Compliance Official to demonstrate the accuracy of the information supplied (such as originals or photocopies of receipts and weight tags or other records of measurement from recycling companies, contractors and/or landfill and disposal companies); and
 - (2) The identity of any processing facility utilized to Divert C&D Debris generated at the Covered Project; and
 - (3) Any barriers encountered that prohibited Diversion of C&D Debris; and
 - (4) Any recommended actions that would further the efforts to Divert and or Recycle C&D Debris; or
- C. As an alternative to providing a Construction and Demolition Waste Recycling and Disposal Report Summary, the Applicant may file a certification under penalty of perjury that all C&D Debris generated by the Covered Project was processed at a City Certified C&D Processing Facility,

accompanied by copies of receipts, weight tickets, or other evidence deemed reasonably satisfactory by the C&D Compliance Official to demonstrate that the material in question was processed by a City Certified C&D Processing Facility.

6.12.100 Refund of Security Deposit.

- A. The C&D Compliance Official shall authorize the refund of any Security Deposit which he determines was erroneously paid or collected.
- B. The C&D Compliance Official shall authorize the refund of any Security Deposit when the building permit, demolition permit, or encroachment permit application is withdrawn or cancelled before any work has begun.
- C. The C&D Compliance Official shall authorize the refund of any Security Deposit if the Applicant submits documentation in compliance with Section 6.12.090, subdivision C, demonstrating that all C&D Debris generated by the Covered Project was processed at a City Certified C&D Processing Facility.
- D. The C&D Compliance Official shall authorize the refund of any Security Deposit if the Applicant submits a Construction and Demolition Waste Recycling and Disposal Report Summary in compliance with Section 6.12.090, and demonstrates that the 75% minimum diversion requirement set forth in Section 6-12.040 has been met.
- E. The C&D Compliance Official shall authorize the refund of any Security Deposit if the Applicant submits a Construction and Demolition Waste Recycling and Disposal Report Summary in compliance with Section 6.12.090, and demonstrates that the Applicant is a resident of the City, that the Covered Project is the Applicant's primary residence, and that the Applicant personally hauled all C&D Debris generated at the Covered Project to a lawful disposal or processing facility (and specifically did not pay any commercial enterprise to remove any of the C&D Debris generated at the Covered Project from that location).
- F. If a Covered Project involves both Demolition and Construction, and if the Applicant does not meet the 75% minimum diversion requirement for the Demolition phase, the C&D Compliance Official may, as an alternative to the other remedies set forth in this Chapter, and as a prerequisite to the return of any Security Deposit, require a diversion rate for the Construction phase of the Covered Project which is high enough to ensure that the combined diversion rate for entirety of the Covered Project (i.e., both demolition and construction) meets the 75% minimum diversion requirement.

6.12.110 Forfeiture of Security Deposit.

If the C&D Compliance Official determines that the Applicant has failed to submit the documentation required by Sections 6.12.090 and 6.12.100 within the required time periods, then the Security Deposit shall be forfeited to the City.

6.12.120 City Certified C&D Processing Facilities.

- A. A City Certified C&D Processing Facility means a recycling, processing, composting, materials recovery, or re-use facility for which the C&D Compliance Official has issued a certification pursuant to regulations promulgated by the C&D Compliance Official.
- B. The regulations promulgated by the C&D Compliance Official to certify a facility as a City Certified C&D Processing Facility shall at a minimum require that the owner or operator of the facility demonstrate to the reasonable satisfaction of the C&D Compliance Official:
 - (1) that the facility will be able to obtain a Diversion rate of not less than 75% for all C&D Debris delivered to it from Covered Projects in the City; and
 - (2) that the facility will provide satisfactory documentation to the C&D Compliance Official, at such intervals as he may require, demonstrating a Diversion rate of not less than 75% has been achieved for all C&D Debris delivered to it from Covered Projects in the City.
- C. The C&D Compliance Official may revoke any certification it grants pursuant to the regulations he promulgates.
- D. The City shall make available to each Applicant a list of City Certified C&D Processing Facilities.

6.12.130 Administrative Fee.

As a part of any application for, and prior to the issuance of, any building or demolition permit that involves the creation of construction and demolition debris, every applicant for Covered Projects, unless exempt, shall pay to the City a cash fee sufficient to compensate the City for all expenses incurred in reviewing the Waste Reduction and Recycling Plan and reviewing performance of the plan. The amount of this fee shall be set forth in a resolution of the City Council.

6.12.140 Appeals.

The Applicant or any interested person may appeal to the City Manager any decision of the C&D Compliance Official. Notice of any appeal from the decision of

the C&D Compliance Official must be filed with the City Manager's Office within ten (10) calendar days of the date of the decision being appealed. The Notice of Appeal shall set forth in concise language that particular decision or decisions complained of and the reason why the person feels aggrieved thereby. Failure to file a notice of appeal within the time prescribed herein shall constitute a waiver of any objection to the decision(s) of the C&D Compliance Official and such decision(s) shall be final; otherwise the decision of the City Manager shall be final. The fee for any appeal authorized herein shall be as set forth by City Council Resolution.

6.12.150 Violations.

- A. Violation of any provision of this Chapter may be enforced by civil action including an action for injunctive relief.
- B. Violations of any provision of this Chapter shall constitute an infraction punishable by a fine as outlined in Section 1.10 of the City of Dana Point Municipal Code. Where the violation is the failure to achieve the 75% minimum diversion requirement and the C&D Debris from the Covered Project has already been landfilled, the violation shall be deemed to have ceased after a period of ten (10) days.

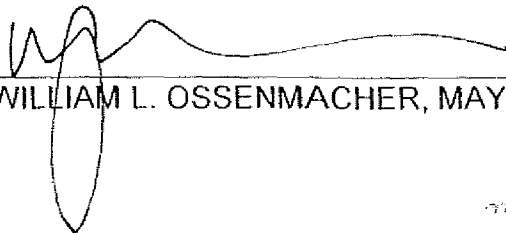
SECTION 3: SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 3: POSTING OF ORDINANCE.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 10th day of December, 2003.


WILLIAM L. OSSENMACHER, MAYOR

ATTEST:


SHARON K. STREET, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, Sharon K. Street, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 03-17 introduced at a regular meeting of the City Council held the 26th day of November, 2003, and passed and adopted at a regular meeting held on the 10th day of December, 2003, by the following roll call vote:

AYES: Council Members Chilton, Lacy, Rayfield,
Mayor Pro Tem Snyder and Mayor Ossenmacher
NOES: None
ABSENT: None
ABSTAIN: None

(SEAL)


SHARON K. STREET, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

SHARON STREET, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 03- 17, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING TITLE 6 "HEALTH AND SANITATION" OF THE DANA POINT MUNICIPAL CODE TO ESTABLISH THE CONSTRUCTION AND DEMOLITION WASTE RECYCLING PROGRAM

was published in summary in the Orange County Register newspaper on the 5th day of December, 2003, and the 15th day of December, 2003, and, in further compliance with City Resolution No. 91-10-08-1, on the 5th day of December, 2003, and the 15th day of December, 2003, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office.
Dana Point Library


SHARON STREET
CITY CLERK
Dana Point, California