

**ORDINANCE NO. 04-225**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, AMENDING CHAPTER 6.10 OF TITLE 6 OF THE MISSION VIEJO MUNICIPAL CODE BY ADDING A NEW DIVISION 10 RELATING TO THE DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE**

THE CITY COUNCIL OF THE CITY OF MISSION VIEJO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 6.10 of Title 6 of the Mission Viejo Municipal Code is amended by adding a new Division 10 to read as follows:

**“DIVISION 10. DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE**

**Section 6.10.1100. Purpose and Intent.**

(a) The provisions of this Division 10 are adopted in recognition of the fact that construction and demolition waste constitutes a substantial portion of the total volume of solid waste generated in the City, much of which is ultimately disposed of in solid waste landfills in Orange County. These construction and demolition waste materials have significant potential for solid waste reduction, reuse, and recycling.

(b) The purpose and intent of the provisions of this Division 10 is to promote the reduction, reuse, and recycling of construction and demolition waste in order to protect the public health, welfare, and safety and to assist the City in meeting its statutory obligations under the California Integrated Waste Management Act of 1989 (AB 939), which requires that each local jurisdiction in the state divert from landfills 50 percent of all solid waste through source reduction, recycling, and composting activities.

(c) The further purpose and intent of the provisions of this Division 10 is to ensure that all construction and demolition waste generated at covered projects in the City is processed at a facility or facilities which cause not less than 75% of such materials to be diverted from landfills in order to assist the City in meeting its statutory obligations under AB 939.

**Section 6.10.1103. Definitions.**

For the purposes of this Division 10, the terms and phrases set forth below will have the following definitions:

(a) “Construction and Demolition Waste” means solid waste, including but not limited to building materials of the nature specified in Section 6.10.010 of Division 1 of this Chapter 6.10, packaging, and rubble resulting from covered projects that involve construction, remodeling, repair, or demolition operations on pavements, single-family and multi-family residences, commercial buildings, and other structures.

(b) “Commingled Loads of Construction and Demolition Waste” means construction and demolition waste that has been intermixed at the point of generation and has not been segregated by type or nature of materials prior to their collection or disposal.

(c) “Source Separated Loads of Construction and Demolition Waste” means construction and demolition waste that has been segregated at the point of generation by type or nature of materials prior to their collection or disposal.

**Section 6.10.1105. Imposition of Diversion Requirements.**

(a) The Building Official is authorized to impose the conditions and requirements set forth in this Division 10 upon permits that are issued for construction, renovation, and demolition projects described below, which projects meet the specified square footage, valuation, or other criteria, and are therefore deemed to be “covered projects:”

(1) The construction of a new residential or commercial structure that involves 250 square feet or more of floor area, and that has a valuation equal to or exceeding \$10,000.

(2) The renovation of an existing residential or commercial structure that involves 250 square feet or more of floor area, and that has a valuation equal to or exceeding \$10,000.

(3) The construction of an accessory structure or other addition to an existing residential or commercial structure that involves 250 square feet or more of floor area, and that has a valuation equal to or exceeding \$10,000.

(4) A demolition project that involves a residential or commercial structure or structures on the same or abutting property that equals or exceeds 250 square feet in floor area, and that has a valuation equal to or exceeding \$10,000.

(5) The re-roofing of a structure that requires the removal of the existing roof.

(b) In calculating the square footage or the valuation of a construction or renovation project, the square footage or valuation of all structures that will be concurrently constructed or renovated by the applicant on the same property or abutting property will be included.

**Section 6.10.1110. Exemptions.**

(a) The following projects are exempt from the requirements of Section 6.10.1105:

(1) Work for which only a plumbing, electrical, or mechanical permit is required, and which the Building Official determines, based upon information provided by the applicant, will not generate more than one ton of construction or demolition waste.

(2) Seismic tie-down projects.

- (3) Installation of prefabricated patio enclosures and covers where no foundation or other structural building modifications are required.
  - (4) Installation of prefabricated accessories, such as signs or antennas, where no structural building modifications are required.
  - (5) Construction or renovation projects that are less than 250 square feet in floor area.
  - (6) Construction or renovation projects that have a valuation of less than \$10,000.
  - (7) Construction or renovation projects that involve a roof, but the tear-off of the existing roof is not required.
  - (8) The construction of new fencing.
  - (9) 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.
- (b) If an applicant for a project desires to obtain an exemption for that project, then the applicant must file with the Building Official an application for exemption stating all facts that support the requested exemption.
- (c) The Building Official will review each application for exemption and determine whether an exemption is authorized by this section. The applicant will be notified of the Building Official's decision.

**Section 6.10.1115. Submission of Waste Diversion Plans**

- (a) An applicant for a permit for a covered project that meets the criteria set forth above in Section 6.10.1105 may elect to comply with the diversion requirements of this Division 10 by following one of the two procedures specified below:
- (1) An applicant for a permit for a covered project may arrange with the City's franchised solid waste collector for one or more construction bins, as defined in Section 6.10.010 of this Chapter 6.10, for the removal of all construction and demolition waste generated by the covered project that will not be salvaged or reused at the site of the covered project. The selection of this option will eliminate the need for a Waste Diversion Plan and the payment of an administrative fee but will not eliminate the required payment of a diversion performance deposit or the submission of a Waste Diversion Report.
  - (2) An applicant for a permit for a covered project may self-haul all construction and demolition waste generated at the project site if a Waste Diversion Plan, in a form provided by the Building Official, is submitted by the applicant. This form will require the following information:

- (A) The vendor or the qualified facility or facilities that the permit applicant proposes to use to collect or to receive the types of materials that constitute the construction and demolition waste.
- (B) The estimated tonnage or volume of construction and demolition waste, by materials type, that is expected to be generated by the covered project.
- (C) The estimated tonnage or volume of construction and demolition waste, by materials type, that may reasonably be salvaged, recycled, reused, or otherwise diverted from disposal at a landfill.
- (D) The estimated tonnage or volume of construction and demolition waste that is expected to be disposed of in a landfill.

(b) No construction or demolition permit will be issued to an applicant for any covered project under paragraph (a)(2) above unless the Building Official has approved the Waste Diversion Plan and has made the following findings:

- (1) The Waste Diversion Plan submitted by the applicant contains all of the information required by paragraph (a)(2) above; and
- (2) The Waste Diversion Plan indicates that at least 75 percent of all construction and demolition waste generated by the covered project will be diverted from disposal at a landfill; provided, however, that the Building Official may approve a diversion percentage that is less than 75 percent if the applicant provides reasonable written justification for that lower diversion percentage.

**Section 6.10.1120. Submission of Waste Diversion Report**

Prior to the final inspection of a covered project, or the issuance of any certificate of occupancy, or the release of any required diversion performance deposit, the permittee must submit additional information that is required by a Waste Diversion Report in a form to be provided by the Building Official. That additional information will include the following:

(a) If compliance with the diversion requirements of this Division 10 is based upon the procedures specified above in Section 6.10.1115(a)(1) that authorize arrangements with the City's franchised solid waste collector, then the permittee must submit the original or a photocopy of the document or documents evidencing the engagement of the franchised solid waste collector to collect and dispose of the construction and demolition waste generated at the site of the covered project.

(b) If compliance with the diversion requirements of this Division 10 is based upon the procedures specified above in Section 6.10.1115(a)(2) that authorize self-hauling, then the permittee must submit the following:

- (1) A copy of the previously approved Waste Diversion Plan for the covered project on which is noted the actual volume or weight of each type of material

that has been diverted from disposal at a landfill, or that has been disposed of at a landfill, and the location or locations where those materials were transported.

(2) Photocopies of receipts, weight slips, or similar records of measurement from the vendor or from the facility or facilities that collected or received each type of material constituting the construction and demolition waste.

(3) Any additional information that the permittee deems to be relevant to a determination of its good faith efforts to comply with the diversion requirements set forth in Section 6.10.1115(a)(2).

**Section 6.10.1125. Payment of Administrative Fee.**

An administrative fee in an amount established by resolution of the City Council must be paid by an applicant for a permit for a covered project that requires the submission of a Waste Diversion Plan. This administrative fee will be in an amount sufficient to cover the City's costs for the processing and review of Waste Diversion Plans, Waste Diversion Reports, applications for diversion performance deposit refunds, and other documentation related to the administration of this Division 10.

**Section 6.10.1130. Diversion Performance Deposit Requirements.**

An applicant for a permit for a covered project must submit with the permit application a diversion performance deposit to guarantee compliance with the diversion requirements of this Division 10. The deposit must be payable to the City and must be in the form of cash or a cash equivalent, such as a personal check, certified check or cashier's check. The amount of the deposit for each category of covered projects set forth above in Section 6.10.1105 will be established by resolution of the City Council. The Building Official 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 volume of construction and demolition waste that is expected to be generated by the covered project.

**Section 6.10.1135. Refund or Forfeiture of Diversion Performance Deposit.**

(a) The permittee of a covered project may, within six months after its completion, obtain a refund of the diversion performance deposit by filing with the Building Official an application for a refund. The application must include information that demonstrates the permittee has either:

(1) Arranged for and used at the project site one or more construction bins provided by the City's franchised solid waste collector for the removal of all construction and demolition waste generated at the site of the covered project; or

(2) Complied with the diversion requirements set forth in the approved Waste Diversion Plan submitted in accordance with Section 6.10.1115(a)(2).

(b) The Building Official will refund the entire diversion performance deposit for a covered project under any of the following circumstances:

(1) The permittee arranged for and used at the project site, on a continuous basis, one or more construction bins provided by the City's franchised solid waste collector for the collection and removal of all construction and demolition waste generated during the course of completion of the covered project.

(2) The permittee complied with the diversion requirements set forth in the approved Waste Diversion Plan and diverted from landfill disposal the required percentage of construction and demolition waste generated by the covered project.

(3) The application for a permit for a covered project is withdrawn or canceled before any construction, renovation, or demolition has commenced.

(4) The diversion performance deposit was erroneously paid by the permit applicant.

(c) The Building Official may authorize a partial refund, up to 75 percent of the diversion performance deposit, where the permittee did not achieve the required percentage of diversion specified in the Waste Diversion Plan, but the Building Official determines that the permittee made a good faith effort to comply with those diversion requirements and that attainment of those requirements was not feasible under the circumstances.

(d) If the Building Official determines that the permittee of a covered project has not made a good faith effort to achieve the required percentage of diversion specified in the Waste Diversion Plan, or if the permittee of a covered project fails within six months after the completion of a covered project to submit supporting information required by paragraphs (a)(1) or (a)(2) above, then the diversion performance deposit will be forfeited to the City.

**Section 6.10.1140. Use of Diversion Performance Deposits.**

Diversion performance deposits received by the Building Official will be deposited in a special account to be used only for the following purposes:

(a) The payment of refunds of diversion performance deposits.

(b) The payment of costs incurred in administering the City's construction and demolition waste diversion program, which costs are not covered by the administrative fee referenced above in Section 6.10.1125.

(c) The development and implementation of additional policies and programs that are approved by the City Council to promote the diversion of construction and demolition waste from landfill disposal and to encourage the salvage, reuse, and recycling of that waste.

**Section 6.10.1145. Duties of the Building Official.**

The duties of the Building Official with regard to the implementation and enforcement of the provisions of this Division 10 consist of the following:

(a) To develop and to make available to applicants for permits for covered projects the following forms:

- (1) Applications for exemption of projects from the diversion requirements of Section 6.10.1105.
- (2) The Waste Diversion Plan that is referenced above in Section 6.10.1115(a)(2).
- (3) The Waste Diversion Report that is referenced above in Section 6.10.1120.
- (4) Forms related to diversion performance deposits to be paid to the City in accordance with Section 6.10.1130.
- (5) Applications for the refund of diversion performance deposits as provided for in Section 6.10.1135.
- (6) Forms related to the appeal of decisions made by the Building Official, as provided for in Section 6.10.1150.

(b) To distribute to permit applicants the name, address, telephone number, days and hours of operation, and schedule of rates and charges of one or more construction and demolition waste recycling facilities that meet the following criteria and that have been approved by the City Council:

- (1) A facility that provides to the City a written guarantee that it is currently achieving not less than a 75 percent diversion rate for all construction and demolition waste that is delivered to the premises of that facility.
- (2) A facility that provides to the City satisfactory evidence in writing that it has adequate capacity to receive and to process the tonnage of construction and demolition waste that is reasonably anticipated to be generated in the City and diverted from landfills on a daily, weekly, and monthly basis.
- (3) A facility that provides to the City satisfactory evidence in writing that it has obtained and maintains all permits, licenses, and other authorizations from federal, state, regional, county, and municipal agencies that are required for its operation as a construction and demolition waste recycling facility, and that such facility is in full regulatory compliance with those permits, licenses, and other authorizations.

(4) A facility that has entered into a written agreement with the City for the processing and diversion of construction and demolition waste attributable to “covered projects” that are subject to City-issued permits, which agreement sets forth insurance and indemnification provisions and such other terms and conditions as may be approved by the City Council.

At its option, the City Council may designate one or more construction and demolition waste recycling facilities as a qualified recycling facility for use by the City’s franchised solid waste collector and by all permittees that are subject to the provisions of this Division 10, subject to such conditions, limitations, and exceptions as may be approved by the City Council with regard to the collection and disposal of commingled and source separated loads of construction and demolition waste.

(c) To review permit applications for all covered projects to determine whether the diversion of at least 75 percent of the construction and demolition waste is feasible, and, where such diversion is not feasible, to authorize a lower diversion rate.

(d) To receive, review, approve, conditionally approve, or reject the Waste Diversion Plan submitted by a permit applicant for a covered project.

(e) To determine a permit applicant’s entitlement to an exemption from the diversion requirements of Section 6.10.1105.

(f) To determine the amount of the diversion performance deposit that is required to be paid for covered projects in accordance with Section 6.10.1130.

(g) To review the Waste Diversion Report submitted by a permittee upon completion of a covered project and to determine compliance with the diversion requirements of this Division 10.

(h) To determine whether a diversion performance deposit paid to the City in accordance with Section 6.10.1130 is to be refunded, in whole or in part, or is to be forfeited.

**Section 6.10.1150. Appeals.**

(a) An aggrieved applicant or permittee may appeal to the Director of Community Development, or the Director’s designee, any decision of the Building Official that relates to the denial of an exemption, the refusal to approve a Waste Diversion Plan or a Waste Diversion Report, or the refusal to refund the entire amount of a diversion performance deposit.

(b) A Notice of Appeal from the decision of the Building Official must be filed with the Director of Community Development within 10 business days after that decision is made by the Building Official. Any failure to file a Notice of Appeal within that 10-day period will constitute a waiver of any objection to that decision, and the decision will be deemed final.



(c) The Notice of Appeal must describe the decision that is being appealed, the reasons why the decision is deemed to be in error, and must be accompanied by all supporting documentation.

(d) The Director of Community Development will review the Notice of Appeal and the supporting documentation and will render a written decision on the appeal.

**Section 6.10.1155. Diversion Information for Projects Not Covered.**

The Building Official will provide information to applicants for permits for construction, renovation, repair, or demolition projects that do not meet the criteria for a “covered project” set forth above in Section 6.10.1105, which information identifies methods, procedures, and recycling facilities that can be used to ensure the diversion from landfills of at least 75 percent of all project-related construction and demolition waste.

**Section 6.10.1160. Evaluation by Building Official.**

Within one year after the effective date of this Division 10, the Building Official must submit to the City Council a report on the effects of this Division 10, including but not limited to an assessment of whether Division 10 is achieving its stated goals and any recommended modifications to this Division 10.

**Section 6.10.1165. Violations; Enforcement.**


(a) It is unlawful for any person to engage in the construction, renovation, or demolition of a covered project in a manner that violates any provision of this Division 10.

(b) Any person violating any provisions of this Division 10 is subject to the enforcement and penalty provisions that are set forth in Division 5 ("Unlawful and Prohibited Acts") of this Chapter 6.10.

Section 2. Severability. 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 sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 3. The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED, and ADOPTED this 4<sup>th</sup> day of October, 2004.

  
Gail Reavis  
Mayor

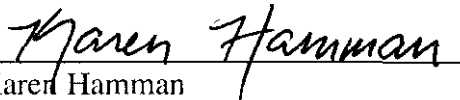
ATTEST:

  
Karen Hamman  
City Clerk


STATE OF CALIFORNIA }  
COUNTY OF ORANGE } ss.  
CITY OF MISSION VIEJO }

I, Karen Hamman, City Clerk of the City of Mission Viejo, California, do hereby certify that the foregoing Ordinance No. 04-225 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 20th day of September, 2004, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council on the 4th day of October, 2004, by the following vote, to wit:

AYES: Craycraft, Kelley, Ledesma, MacLean, and Reavis  
NOES:  
ABSTAIN:

  
\_\_\_\_\_  
Karen Hamman  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Peter M. Thorson  
City Attorney