

ORDINANCE NUMBER 1197

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, ADDING CHAPTER 7.44 TO THE PERRIS MUNICIPAL CODE, ESTABLISHING REGULATIONS FOR THE DISPOSAL OF CONSTRUCTION AND DEMOLITION DEBRIS

WHEREAS, the California Integrated Waste Management Act of 1989, commonly referred to as Assembly Bill 939 ("AB 939" or the "Act"), codified in substantial part as Public Resources Code §§ 40000, *et. seq.*, requires each local jurisdiction in the State to divert at least fifty percent of materials discarded within the jurisdiction from disposal in landfills and transformation facilities, and authorizes the California Integrated Waste Management Board ("CIWMB") to impose penalties of up to \$10,000 per day for non-compliance with these diversion requirements; and

WHEREAS, Public Resources Code § 41821, a portion of the Act, requires cities to provide CIWMB with an annual report concerning each city's progress in meeting its diversion requirements with respect to construction and demolition materials; and

WHEREAS, Public Resources Code § 41850, which is also part of the Act, requires CIWMB's analysis of a city's compliance with the Act and its determination of whether to impose penalties on a city that fails to meet the diversion requirements and to take into consideration whether the city has adopted an ordinance requiring the diversion of construction and demolition materials or made other good-faith efforts to meet the city's diversion requirements with respect to construction and demolition materials; and

WHEREAS, the experiences of other cities and studies undertaken by the CIWMB have shown that, except in unusual circumstances, it is feasible to divert at least fifty percent of all construction and demolition materials from landfills by engaging in reuse and recycling of these materials; and

WHEREAS, construction and demolition materials currently represent a significant portion of the volume of waste originating in the City of Perris ("City"), as the Perris Municipal Code does not currently require construction and demolition debris to be recycled; and

WHEREAS, the City Council of the City has determined that the public health, safety and welfare of the residents of the City will be promoted and the environmental quality of the City and surrounding areas will be preserved and maintained by establishing a process to ensure that construction and demolition materials are recycled;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY ORDAINS AS FOLLOWS:

Section 1. The foregoing Recitals are incorporated herein as if set forth in full.

Section 2. Chapter 7.44 is hereby added to the Perris Municipal Code to read as follows:

"Chapter 7.44

CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT

Sections:

- 7.44.010 Purpose and Intent.**
- 7.44.020 Definitions.**
- 7.44.030 Covered Projects.**
- 7.44.040 Application for Exemption.**
- 7.44.050 Compliance and Diversion Rates.**
- 7.44.060 Submission of Waste Management Plan.**
- 7.44.070 Diversion Security Deposit.**
- 7.44.080 Review of Waste Management Plan.**
- 7.44.090 Compliance Review and Refund of Security Deposit.**
- 7.44.100 Violations and Enforcement.**
- 7.44.110 Appeals.**

Section 7.44.010 Purpose and Intent.

The purpose of this chapter is to promote the recycling of construction and demolition debris which is recyclable and reusable to protect the public health, safety and welfare and to meet the city's obligations under State law, including Assembly Bill 939. Accordingly, this chapter establishes regulations to compel applicants for "covered projects" to divert a minimum of fifty percent of their construction and demolition debris from landfills.

Section 7.44.020 Definitions.

The definitions set forth in this section shall govern the construction of this Chapter.

Applicant. 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 any permit, as defined in this chapter, and who, therefore, becomes responsible for complying with this chapter.

Board. The California Integrated Waste Management Board.

City Manager. The city's City Manager, or his or her designee.

Completion. The earliest of the following dates: the date a temporary certificate of occupancy is issued by the city for a project, the date a certificate of occupancy is issued by the city for a project, or the date the final city inspection approving the project is completed.

Construction. The building or enlargement of any structure, or any portion thereof, which includes, without limitation, and alterations or improvements to an existing structure for the purpose of grading or grading.

Construction and demolition material. Excess or discarded material or other debris that is removed from a site during or after the construction or demolition of any structure, fence, wall, grading or paving. Construction and demolition materials include bathroom fixtures, appliances, windows, masonry building materials and roofing materials.

Conversion rate. The rate set forth in the standardized conversion rate table for use in estimating the volume or weight of construction and demolition debris, approved by the Board.

Covered project. Any project meeting the thresholds established in Section 7.44.030.

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

Director. The City's Director of Public Works, or his or her designee.

Divert (and diversion). The recycling and/or reuse of construction and demolition debris to avoid disposal in a landfill.

Diversion requirement. The diversion of either (i) the minimum of fifty percent of the total construction and demolition material generated by a covered project, or (ii) the lower percentage requirement granted by an exemption pursuant to Section 7.44.040.

Excavation. Digging or removing soil, rocks, gravel, sand or related materials from a site including, but not limited to, such work as is customarily performed in connection with the construction of buildings or the dredging or construction of canals, drainage basins, waterways, lakes, levees, or dams.

Mining. Any activity governed by the Surface Mining and Reclamation Act (Public Resources Code §2710 *et seq.*).

Permit. Any building, demolition or grading permit.

Project. Any application for new construction, alteration or enlargement of any structure or surface, that requires a permit from the City.

Recycling and reuse. The process of collecting, sorting, cleansing, treating, and reconstituting construction and demolition debris that would otherwise be disposed of in a landfill for use as raw material for, new, reused, or reconstituted products which meet industry standards. For the purposes of this article, recyclable and reusable construction or demolition debris shall mean and include any material which is any of the following:

- A. Masonry building materials and similar products generally used in construction including, but not limited to, asphalt, concrete, rock, stone and brick.
- B. Wood materials including all dimensional lumber, fencing, or construction wood that has not been chemically treated, creosoted, CCA pressure treated, contaminated or painted.
- C. Plant materials including trees, tree parts, shrubs, stumps, logs, brush or any other type of plant or green waste that is cleared from a site for construction or other purpose.
- D. Metals, including all metal scrap such as, but not limited to, pipes, siding, window frames, doorframes and fences.
- E. Roofing materials, including wood shingles, asphalt, stone, tile and slate-based roofing materials.
- F. Other salvageable materials including, but not limited to, wallboard, doors, windows, fixtures, toilets, sinks, bath tubs and appliances.
- G. Any other construction or demolition debris that is non-hazardous and available for recycling or reuse, as identified on the approved building plans issued by the city.

Structure. Anything constructed or erected that requires a location in the ground, including a building or swimming pool, but not including a fence or wall used as a fence, or driveways, or walkways.

Waste management plan. A plan, which must be approved in advance by the Director, approximating the amount of construction and demolition material to be generated by a project and establishing methods by which the appropriate portion of such material will be diverted.

Section 7.44.030 Covered Projects.

A. Unless otherwise determined to be exempt or unless a lower diversion rate is approved pursuant to Section 7.44.040, projects meeting any of the following criteria shall be considered "covered projects" and shall comply with all provisions of this chapter including, but not limited to, the fifty percent diversion requirement for construction and demolition materials:

1. Additions of 1,000 square feet or more of gross floor area;
2. Tenant improvements affecting 3,000 square feet or more of gross floor area;
3. All new structures;
4. Demolition of 1,000 square feet or more of gross floor area;
5. Excavation, mining, or grading activities that result in the export of earth, soil, rocks, gravel, plant or other materials off the project site.
6. All City public works and City public construction projects, provided that the waste management plan and diversion security deposit shall be prepared and submitted by the prime contractor constructing each such project.

B. Projects meeting any of the following criteria shall be exempt from the requirements of this chapter, provided that the applicant has provided the City with satisfactory evidence supporting the claimed exemption, and provided that the City has issued a written determination of exemption, which may take the form of a stamp or other notation of exemption on the application for a building, demolition or grading permit:

1. Projects not meeting any of the criteria described in subsection A;
2. Immediate or emergency construction, repair, or demolition work required to protect the public health or safety in an emergency, as defined in Section 21060.3 of the Public Resources Code, as it may be amended from time to time;
3. Work for which a building, demolition or grading permit is not required by this code;
4. A project for which a valid building, demolition or grading permit has been issued prior to October 1, 2006 which does not expire prior to construction;
5. A City project for which the notice inviting bids has been published prior to October 1, 2006;
6. A roofing project which does not include tearing off an existing roof;
7. The installation of new fencing which does not include the replacement of existing fencing;
8. Excavation of residential swimming pools; or

9. Projects, as determined by the Director, not anticipated to generate construction or demolition debris.

Section 7.44.040 Application for Exemption.

A. Prior to commencing demolition or construction, an applicant wishing relief from the requirements of this chapter may seek a complete or partial exception from the requirements of this chapter.

B. The exemption process shall be initiated by the filing of an application for exception with the Director, and payment of any application fee established by resolution of the City Council, as amended from time to time. The City Council may establish, by resolution, an application fee in an amount sufficient to reimburse the City's costs to review an application for an exemption. The application shall indicate:

1. The estimated volume or weight of project waste to be generated identified by material type,

2. The maximum volume or weight of each type of material than can be feasibly diverted via reuse or recycling,

3. The vendors the applicant proposes to use to haul each type of material,

4. The volume or weight of each type of material that can be reused on site,

5. The volume or weight of each type of material that can be given away or sold on site,

6. The facility(ies) that each type of material will be hauled to, and the expected diversion rate per material type,

7. The estimated volume or weight of construction or demolition debris that will be disposed of as a part of the project per material type,

8. The specific circumstances the applicant believes make it infeasible to comply with the diversion requirement,

9. Any additional information requested by the Director.

C. The Director shall review the exemption application and either grant an exemption, authorize a reduced diversion requirement, or deny the application. The Director may, but is not required to, meet with the applicant to discuss possible means of meeting the diversion requirements set forth in this chapter. A decision on an exemption application, or a

conclusion that the application is incomplete, shall be rendered within 10 business days of receipt of the application.

D. To grant a complete or partial exception from the requirements of this chapter, the Director must make all of the following findings:

1. There are exceptional or extraordinary circumstances applicable to the project that do not apply generally to similar projects, such as contamination of construction and demolition materials by hazardous substances or low recyclability of specific materials to be used in or removed from the project;

2. Granting the application will not constitute a grant of special privilege inconsistent with limitations imposed on similar projects;

3. The cost to the applicant of strict compliance with the requirements of this chapter is not the primary reason for granting the exemption; and

4. The applicant has submitted the appropriate security deposit and fees.

E. If the Director determines that the exemption application is incomplete or fails to indicate how at least fifty percent of all construction and demolition debris generated by the project will be diverted, the applicant shall be returned to the applicant indicating either:

1. "Further Explanation Needed" with a statement of the type of additional information needed; or

2. "Disapproved" with a statement of reasons for the disapproval.

When an application for exemption has been disapproved, the Director shall notify the building department to immediately stop processing the building or demolition permit application.

Section 7.44.050 Compliance and Diversion Rates.

Each applicant for a covered project that has not received an exemption pursuant to Section 7.44.030 shall divert or cause to be diverted a minimum of fifty percent of the construction and demolition materials resulting from the project. Compliance with this requirement and the other provisions of this chapter shall be listed as a condition of approval on all building or demolition permits issued for a covered project.

Diversion may be satisfied by any of the following methods:

1. Documented on-site reuse of the construction and demolition debris.

2. Documented delivery of construction and demolition debris to an approved recycling facility.

3. Any other methods approved by the Director, as set forth on the approved plans issued by the City.

Section 7.44.060 Submission of Waste Management Plan.

The applicant for each covered project shall complete and submit to the Director three copies of a waste management plan, as part of the application packet for a building, demolition or grading permit, including the payment of the security deposit required by Section 7.44.070 and the payment of any application fee established by resolution of the City Council. The City Council may establish, by resolution, an application fee in an amount sufficient to recover the City's costs in administering this chapter including, but not limited to, the City's costs to review the waste management plan, process the applicant's deposit, and conduct the compliance review required by Section 7.44.090. The waste management plan shall include the following information, calculated with the applicable conversion rate:

1. The estimated volume or weight of construction and demolition material to be generated, with separate listings for each type of material.

2. The estimated volume or weight of construction and demolition material that can be diverted, with separate listings for each type of material.

3. The estimated volume or weight of construction and demolition material that will be landfilled as solid waste.

4. The vendor or facility that will collect or receive the construction and demolition material or that will deconstruct the existing structure. Applicants opting to self-haul construction and demolition material shall comply fully with the terms of this Chapter, shall deliver such material only to a facility licensed to provide disposal and diversion services, and shall receive and retain receipts for all such material. Applicants who do not self-haul shall use the services of the solid waste hauler holding an exclusive solid waste franchise from the City (if an exclusive franchise has been awarded), unless the franchised hauler indicates in writing that it lacks sufficient equipment, expertise, or disposal or diversion capacity to handle construction and demolition material from an applicant's project.

5. The volume or weight of each type of material that can be reused on site.

6. The volume or weight of each type of material that can be given away or sold on site.

7. The estimated commencement date for the demolition or construction work.

8. Any additional information requested by the Director.

Applicants are not required to make detailed measurements; a good-faith estimate of the quantity of each material will suffice.

Section 7.44.070 Diversion Security Deposit.

Each applicant for a permit for a covered project shall submit with its waste management plan a diversion security deposit, in cash, cashier's check or money order, in the amount equal to three percent of the total estimated project cost, or (ii) \$10,000, whichever is less. The Director may waive the diversion security deposit requirement if the total deposit required under this section would be fifty dollars or less.

Section 7.44.080 Review of Waste Management Plan.

A. Notwithstanding any other provisions of this code, no building permit shall be issued for any covered project unless and until the Director has approved the waste management plan submitted for the project. A waste management plan shall be approved or disapproved within 10 business days of submittal of a complete plan.

B. No waste management plan shall be approved unless the Director makes all of the following findings:

1. The waste management plan provides all of the information required by Section 7.44.060;
2. The waste management plan indicates that at least fifty percent of the construction and demolition material produced by the project will be diverted or that an exemption has been approved pursuant to Section 7.44.040; and
3. The applicant has submitted the diversion security deposit required by Section 7.44.070.

C. If the Director makes the findings set forth in subsection B, the waste management plan shall be stamped "approved", the Director shall retain one copy of the plan, and shall forward copies of the stamped plans to the applicant and the Community Development Department. If the Director disapproves the waste management plan, the Director shall state the grounds for denial in writing, retain one copy of the plan, and forward copies of the waste management plan and the grounds for denial to the applicant and the Community Development Department. As an alternative to outright disapproval, the waste management plan may be returned to the applicant with a request for additional information.

D. If, during the course of the project, the applicant determines that the estimated weight or volume of construction and demolition material to be generated and or recovered from the project is substantially different from the weight or volumes set forth in the waste management plan, the applicant shall submit an addendum to the original waste management plan.

Section 7.44.090 Compliance Review and Refund of Security Deposit.

A. Within 30 days after the completion of any covered project, the applicant shall submit to the Director documentation concerning the applicant's compliance with the diversion requirements for the project. This documentation shall include:

1. Receipts from the vendor or facility that collected or received construction and demolition material from the project, noting the actual weight or volume of material collected or received, including separate summary listings for material diverted and material landfilled;

2. Information concerning the weight or volume of construction and demolition material recycled or reused in the project.

If a compliance report is not submitted to the Director within the timeframe specified above or if a compliance report is not turned in at all, the applicant's entire security deposit shall be forfeited unless a written request for extension has been submitted to the Director, prior to the original due date of the report, with a written justification of the reasons why the report has been delayed and a statement of when the report shall be submitted, which shall be no later than thirty days from the original due date for the report. No compliance report may receive more than one extension.

B. All applicants shall make reasonable efforts to ensure that construction and demolition materials, whether diverted or landfilled, are measured and recorded. Volumetric measurements may be used, incorporating the standardized conversion rates approved by the City.

C. The Director shall review the information submitted under subsection (A) to determine whether the applicant has complied with the diversion requirement applicable to the project.

1. If it is determined that the diversion requirement has been achieved, the full amount of the diversion security deposit shall be refunded to the applicant.

2. If it is determined that the diversion requirement has not been met, that portion of the diversion security deposit shall be refunded which is equal to the portion of the diversion requirement that has been met, unless the Director finds, in his or her sole discretion, that the applicant's failure to meet its diversion requirement has occurred despite the applicant's

good-faith effort to satisfy the requirement. Any applicant who failed to meet its diversion requirement who desires a waiver of the partial security deposit forfeit must include with its compliance report (i) a specific request for a waiver of the partial security deposit forfeit and (ii) documentation of its good faith efforts to comply with its diversion requirement.

Any portion of a diversion security deposit not released to the applicant shall be forfeited to the City, and shall be used either to offset administrative costs associated with enforcing the requirements of this chapter or for efforts to educate the community about the need for recycling and to encourage recycling.

Any deposit, or portion thereof, which is refunded shall be returned without interest.

Section 7.44.100 Violations and Enforcement.

A. It shall be unlawful and a violation of this chapter to do any of the following:

1. Willfully fail to comply with any provision of this chapter;
2. Provide false or misleading information in any plan, report, or document required by this chapter; or
3. Fail to meet the diversion requirement established by this chapter.

B. An applicant shall be guilty of a separate offense for each day during any portion of which a violation under this chapter is committed, continued, or permitted by the applicant. For failure to meet the diversion requirement, the violation shall be deemed to have commenced at the commencement of construction or demolition work, as shown on the applicant's waste management plan.

C. Any person who commits a violation described in Sections 7.44.100(A) (1) or (2) is guilty of a misdemeanor and may be punished by a fine of not more than \$1,000 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment; provided, however, that the city prosecutor shall have the discretion to prosecute such violations as infractions.

D. Any person who willfully violates Section 7.44.100(A)(3) is guilty of an infraction and may be punished by a fine not to exceed \$100 for the first violation, \$200 for the second violation within a year, and \$500 for each additional violation within one year.

E. In addition to the penalties set forth in Subsections (B) and (C) above, when a violation of the provisions of this occurs, the City may use various administrative measures to ensure compliance including, but not limited to:

1. Withholding a permit or a certificate of occupancy for a project until all violations have been corrected;
2. Issuing a stop work notice until all violations have been corrected;
3. Stopping all inspections for the project until all violations have been corrected; and
4. Applying any other civil or criminal penalties or liabilities recommended by the city attorney.

F. A violation of any provision of this chapter is declared to be a public nuisance, which may be abated by the City through any legal means. The penalties and remedies established by this chapter are cumulative and not exclusive, and this chapter shall not preclude any person from seeking any other remedies provided by law.

Section 7.44.110 Appeals.

A. Any applicant aggrieved by any decision or finding made by the Director to the City Manager in the exercise of the authority granted herein, may appeal such decision or finding. An appeal must be filed within five days after receipt of notice of any protested decision or finding by filing with the City Clerk, with a copy to the Director, a letter of appeal stating therein the basis for such appeal, including all evidence and legal arguments which the applicant wishes the City Manager to consider.

B. An administrative hearing shall be held on a date not more than 15 days after receipt by the City of the letter of appeal. The applicant shall be given at least five days' notice of the time and place of the hearing. The City Manager, shall give the appellant, and any other interested party, a reasonable opportunity to be heard, in order to show cause why the decision or finding should not be upheld. In all such cases, the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the decision or finding appealed.

C. At the conclusion of the hearing, or within five days thereof, the City Manager shall provide the applicant with a copy of the hearing officer's decision, which shall be in writing and shall comprise a final and conclusive determination as to the matter appealed."

Section 1. Effective Date. This Ordinance shall take effect 30 days after its adoption.

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 portions 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. Certification. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Perris.

ADOPTED, SIGNED and **APPROVED** this 29th day of August, 2006.

Mayor, Daryl R. Busch

ATTEST:

City Clerk, Judy L. Haughney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Judy L. Haughney, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Ordinance Number 1197, introduced at a regular meeting of the City Council of the City of Perris held on the 11th day of July, 2006, was duly and regularly adopted by the City Council at a regular meeting thereof held on the 29th day of August, 2006, and that it was so adopted by the following called vote:

AYES: Rogers, Yarbrough, Landers, Motte, Busch
NOES:
ABSENT:
ABSTAIN:

City Clerk, Judy L. Haughney