

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 6, SECTIONS 66.0601, 66.0602, 66.0603, 66.0604, 66.0605, 66.0606, 66.0607, 66.0608, 66.0609, AND 66.0610, ALL RELATING TO THE DIVERSION OF CONSTRUCTION AND DEMOLITION DEBRIS FROM LANDFILL DISPOSAL.

WHEREAS, the City operates the Miramar Landfill [Landfill], which currently is the only municipal landfill in the City; and

WHEREAS, the Landfill is expected to close between 2011 and 2013; so preserving Landfill capacity in order to extend the useful life of the Landfill for the benefit of the citizens of the City is of paramount concern; and

WHEREAS, the California Integrated Waste Management Act of 1989, Assembly Bill 939 [AB 939], requires that each local jurisdiction in the State divert 50% of waste from landfill disposal; and

WHEREAS, the City could face fines up to \$10,000 per day for not meeting State diversion mandates and may be obligated to adopt the State's Construction and Demolition recycling regulations if the City fails to timely meet those mandates; and

WHEREAS, at least 35%, or 586,000 tons, of waste going into local landfills each year originates from construction and demolition projects within the City and that amount continues to grow; and

WHEREAS, reusing and recycling construction and demolition debris is necessary both to preserve and extend the useful life of the Landfill and to further efforts to reduce waste and comply with AB 939 mandates; and

WHEREAS, construction and demolition debris recycling is proven to reduce the amount of such material deposited in a landfill; and

WHEREAS, except in unusual circumstances, it generally is feasible to divert most of the construction and demolition debris generated from most construction, demolition, and renovation projects; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 6 of the San Diego Municipal Code is hereby amended by adding Division 6, sections 66.0601, 66.0602, 66.0603, 66.0604, 66.0605, 66.0606, 66.0607, 66.0608, 66.0609, and 66.0610, to read as follows:

Division 6

Construction and Demolition Debris Diversion Deposit Program

§ 66.0601 Findings

The Council of the City of San Diego finds and declares that:

- (a) The City operates the Miramar Landfill, which is currently the only municipal landfill in the City. The Miramar Landfill currently is expected to close between 2011 and 2013. Preserving landfill capacity at the Miramar Landfill in order to extend the useful life of the Miramar Landfill for the citizens of the City is a paramount concern.
- (b) The City has made and continues to make progress in meeting the waste *diversion* requirements imposed by AB 939, but additional efforts, particularly in the *diversion of construction and demolition debris*, will assist the City in more quickly reaching the goal of *diverting* 50% of its waste from landfill *disposal*.

- (c) Studies show that approximately 35% of the waste generated in the City of San Diego delivered for *disposal* is *construction and demolition debris*, which could be *diverted* from landfill *disposal*.
- (d) Efforts by the City and the private sector to encourage voluntary *construction and demolition debris diversion* have not been as successful as the City had hoped and additional efforts are necessary to timely meet AB 939 requirements.
- (e) *Construction and demolition debris diversion* deposit programs in other jurisdictions in the State, similar to the one implemented by this Division, have proven successful in increasing *diversion of construction and demolition debris* and have been favorably received by the California Integrated Waste Management Board.

§ 66.0602 Purpose of Construction and Demolition Debris Diversion Deposit Program

The purpose of this Division is to establish the Construction and Demolition Debris Diversion Deposit Program. This program is intended to increase the *diversion of construction and demolition debris* from landfill *disposal*, conserve the capacity and extend the useful life of the Miramar Landfill, and avoid the potential financial and other consequences to the City of failing to timely meet AB 939 requirements.

§ 66.0603 Definitions

All defined terms in this Division appear in *italics* and are found in sections 11.0210, 66.0102, and 113.0103 of this Code, except for the terms Building Permit and Demolition/Removal Permit which refer to those terms respectively as used in the Land Development Code and which, consistent with the Land Development

Code, are not italicized in this Division. In addition, whenever the following words or phrases are used in this Division, they mean:

AB 939 means the California Integrated Waste Management Act, codified at California Public Resources Code sections 40000 et seq.

Certified recycling facility means a recycling, composting, materials recovery or reuse facility which accepts *construction and demolition debris* and which has been certified by the *Director* pursuant to rules promulgated by the *Director*.

Construction and demolition debris means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, alteration, and/or demolition operations on pavements, houses, commercial buildings, and other *structures* and may include, but is not limited to, concrete, asphalt, wood, metals, bricks, dirt, rocks, and other inert waste.

Director means the Director of the Environmental Services Department (and its successor) or the designee of the Director of the Environmental Services Department (and its successor).

Disposal means the final deposition of *solid waste* at a permitted landfill.

Diversion or *Divert* means the reduction or elimination of *solid waste* from landfill *disposal*.

Hazardous waste has the same meaning as set forth in section 66.0102 of this Code.

Solid Waste means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including, but not limited to, garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, *construction and demolition debris*, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or

chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

Solid Waste does not include hazardous waste, hazardous substances or medical wastes, as those terms are defined in this Chapter 6 or in State or Federal law.

Waste Management Form Part I means the form prepared by the City Manager on which an *applicant* for a Building Permit or Demolition/Removal Permit shall provide information including, but not limited to, the types and amounts of *construction and demolition debris* the *applicant* anticipates the *development* will generate and the expected *construction and demolition debris diversion* the *applicant* expects to achieve for that *development*.

Waste Management Form Part II means the form prepared by the City Manager on which the *applicant* for a Building Permit or Demolition/Removal Permit shall provide information including, but not limited to, the name and address of the *person* to whom a deposit refund, if any, shall be issued, as well as documentary evidence in a form satisfactory to the *Director* demonstrating the *construction and demolition debris diversion* the *applicant* achieved for the *development*.

§ 66.0604 Submittal of Waste Management Form and Diversion Deposit

- (a) Except as otherwise provided in this Division, all *applicants* for a Building Permit or a Demolition/Removal Permit, including the City of San Diego, shall submit a properly completed *Waste Management Form Part I* with the Building Permit or Demolition/Removal Permit application, in accordance with the requirements set forth in the Land Development Manual.

- (b) Except as otherwise provided in this Division, the *applicant*, including the City of San Diego, shall pay a refundable deposit at the time of submitting the Building Permit or Demolition/Removal Permit application.
- (c) No Building Permit or Demolition/Removal Permit shall be issued unless the *applicant* has submitted a properly completed *Waste Management Form Part I* and paid the required deposit.

§ 66.0605 Establishment of Construction and Demolition Debris Diversion Deposits

The City Council shall establish by resolution a schedule of *construction and demolition debris diversion* deposits applicable to Building Permits and to Demolition/Removal Permits. The schedule shall be reviewed and adjusted periodically to ensure the purposes of this Division are met.

§ 66.0606 Entitlement to Refund of Diversion Deposit

- (a) An *applicant* is eligible for a refund of the deposit paid pursuant to Section 66.0604(b) provided the *applicant* submits the following directly to the *Director* within 180 days of the final inspection date for the *development* for which the deposit was paid:
 - (1) A properly completed *Waste Management Form Part II*, in accordance with the requirements set forth in the Land Development Manual, which demonstrates the *construction and demolition debris diversion* the *applicant* achieved for the *development*.
 - (2) Evidence satisfactory to the *Director* that the *construction and demolition debris* generated by the *development* was *diverted*, at the applicable *diversion* rate set forth in Section 66.0606(d) below, by one or more of the following methods:

- (a) on-site reuse of the *construction and demolition debris*;
 - (b) acceptance of the *construction and demolition debris* by a *certified recycling facility*; or
 - (c) other donation or reuse of the *construction and demolition debris* acceptable to the *Director*.
- (b) *Construction and demolition debris* shall be measured by weight or by volume, whichever is most accurate and practicable. To the extent practicable, all *construction and demolition debris* shall be weighed on a scale.
- (1) For *construction and demolition debris* which is weighed, the *applicant* shall use a scale which is in compliance with all federal, state, and local regulatory requirements for accuracy and maintenance of such scale.
 - (2) For *construction and demolition debris* for which measurement by weight is not practicable, the *applicant* shall measure by volume and convert the volumetric measurements to weight using the standardized rates established in the City Construction and Demolition Debris Conversion Rate Tables.
 - (3) The *Director* reserves the right, when appropriate, to establish standard weights for various types of *construction and demolition debris* items based upon accepted average weights for such items. These standard weights shall be listed in the City Construction and Demolition Debris Conversion Rate Tables.
- (c) Refunds will be based on proof, satisfactory to the *Director*, of the *construction and demolition debris diversion* the *applicant* achieved for the *development* for which the deposit was paid.

- (d) If the *Director* determines the applicant is entitled to a refund, the amount of the refund shall be in the same proportion to the deposit paid by the *applicant* as the *diversion* rate achieved for the *development* is to the applicable *diversion* rate set forth below:
- (1) For Building Permits or Demolition/Removal Permits issued on January 1, 2006 through and including June 30, 2006, the *diversion* rate shall be 25% by weight of the total *construction and demolition debris* generated by the *development*;
 - (2) For Building Permits or Demolition/Removal Permits issued on July 1, 2006 through and including December 31, 2006, the *diversion* rate shall be 50% by weight of the total *construction and demolition debris* generated by the *development*, provided that a *certified recycling facility* which accepts mixed *construction and demolition debris* is operating in the City at a 50% *diversion* rate as of July 1, 2006. If such a facility is not in operation as of July 1, 2006, the *diversion* rate shall remain as set forth in Section 66.0606(d)(1) until 90 days after the City has notified the public that such a facility is available, at which time the *diversion* rate shall increase to 50% by weight of the total *construction and demolition debris* generated by the *development*;
 - (3) For Building Permits or Demolition/Removal Permits issued on and after January 1, 2007, the *diversion* rate shall be 75% by weight of the total *construction and demolition debris* generated by the *development*, provided that a *certified recycling facility* which accepts mixed *construction and demolition debris* is operating in the City at a 75%

diversion rate as of January 1, 2007. If such a facility is not in operation as of January 1, 2007, the *diversion* rate shall remain as set forth in Section 66.0606(d)(1) or Section 66.0606(d)(2), whichever *diversion* rate is then in effect. Thereafter, the *diversion* rate shall increase from the *diversion* rate then in effect to the rate set forth in Section 66.0606(d)(2) or Section 66.0606(d)(3), as applicable, 90 days after the City has notified the public of the *diversion* rate increase.

- (e) Notice of a *diversion* rate increase as described in Section 66.0606(d)(2) and Section 66.0606(d)(3) may be given by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City.
- (f) The *Director* shall determine whether a *certified recycling facility* has reached a certain *diversion* rate.
- (g) The *Director* may refund a deposit paid or collected in error.
- (h) If a Building Permit or Demolition/Removal Permit application, for which a deposit has been paid, is subsequently withdrawn or cancelled before work on the *development* has commenced, the *Director* may refund the deposit paid by the *applicant* upon the *applicant's* submittal to the *Director* of satisfactory proof of the withdrawal or cancellation of the application.
- (i) The *Director* shall issue the refund to the *applicant* within the time established by City Council resolution.
- (j) In no event shall the refund be in an amount greater than the deposit paid by the *applicant*.

§ 66.0607 Certified Recycling Facilities

The *Director* shall establish rules and regulations for certifying facilities for purposes of this Division including, but not limited to, criteria for determining the diversion rate achieved by the facility and for verifying that the facility has obtained all applicable permits and licenses. The *Director* shall certify facilities in accordance with those rules and regulations.

§ 66.0608 Diversion Deposit Program Exemptions

- (a) The following activities, alone or in combination with one another, are exempt from this Division, except if the activity or activities is/are undertaken in conjunction with *development* which otherwise is subject to this Division:
- (1) Roofing projects that do not include the tear-off of the existing roof.
 - (2) Installation, replacement, or repair of a *retaining wall*.
 - (3) Installation, replacement, or repair of a carport, patio cover, balcony, trellis, or fireplace.
 - (4) Installation, replacement, or repair of a deck.
 - (5) Installation, replacement, or repair of a *fence*.
 - (6) Installation, replacement, or repair of a swimming pool or a spa.
 - (7) Installation, replacement, or repair of a pre-fabricated *sign* which does not require modification to the *structure* to which the *sign* is attached.
 - (8) Installation, replacement, or repair of storage racks.
 - (9) *Development* which requires only an electrical permit, only a plumbing permit, or only a mechanical permit.
- (b) The following activities are exempt from this Division:

- (1) *Development* which is expected to generate only *hazardous waste* and/or *hazardous substances*.
- (2) *Development* for which the *construction and demolition debris* deposit is less than \$100 as calculated by the Development Services Department or its successor.

§ 66.0609 Unrefunded Diversion Deposits and Accrued Interest

A deposit which is not refunded or claimed in accordance with this Division is the property of the City. For purposes of each and every deposit and all interest accrued thereon, the relationship between the *applicant* and the City is that of debtor-creditor, respectively. All interest accruing on each deposit is the property of the City, and the *applicant* shall have no claim upon the interest.

§ 66.0610 Use of Diversion Deposits and Accrued Interest

All deposits and accrued interest thereon shall be deposited into the Recycling Fund created pursuant to section 66.0135 of this Code. All deposits and accrued interest thereon shall be used solely and exclusively for the following purposes:

- (a) payment of deposit refunds, as determined by the *Director*;
- (b) payment of administrative costs of the Construction and Demolition Debris Diversion Program established by this Division;
- (c) payment of costs of programs designed to encourage *diversion of solid waste* from landfill *disposal*;
- (d) payment of costs of programs designed to develop or improve the infrastructure to *divert solid waste* from landfill *disposal*; or
- (e) payment of costs to develop or improve infrastructure to *divert solid waste* from landfill *disposal*.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on January 1, 2006.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
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