

ORDINANCE NO. 333

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUCAIPA, CALIFORNIA, AMENDING THE YUCAIPA MUNICIPAL CODE, ADDING CHAPTER 8.26 TO TITLE 8 (HEALTH AND SAFETY), TO ESTABLISH THE CONSTRUCTION AND DEMOLITION WASTE DIVERSION PROGRAM.

WHEREAS, the City of Yucaipa (the "City") is committed to protecting the public health, safety, welfare, and environment; and

WHEREAS, in order to meet these goals it is necessary that the City promote the reduction of solid waste, and reduce the stream of solid waste going to landfills; and

WHEREAS, under California law as embodied in the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.), the City of Yucaipa is required to prepare, adopt and implement source reduction and recycling plans to reach landfill diversion goals, and is required to make substantial reductions in the volume of waste materials going to the landfills, or face fines up to \$10,000 per day; 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 diminishing; and

WHEREAS, the City's commitment to the reduction of waste and to be in compliance with state law requires the establishment of a program for recycling and salvaging construction and demolition materials; and

WHEREAS, the City finds and determines that the public interest, health, safety and welfare will be best served if construction and demolition waste 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 YUCAIPA DOES ORDAIN AS FOLLOWS:

SECTION 1. ADDITION OF CHAPTER 8.26

The City of Yucaipa Municipal Code is hereby amended to add a new chapter 8.26 to Title 8, entitled "Health and Safety," as follows:

"Chapter 8.26"

DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE

- 8.26.010 Declaration of Purpose
- 8.26.020 Definitions
- 8.26.030 Diversion Requirement
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- 8.26.050 Covered and Non-Covered projects

8.26.060	Waste Management and Diversion Plan Required
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8.26.100	On-Site Practices
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8.26.010 Declaration of Purpose

The purpose of this chapter is to promote the diversion of construction and demolition waste in order to protect the public health, safety and welfare and to meet the City’s obligations under the California Waste Integrated Management Act (Cal. Pub. Res. Code § 4000 *et seq.*).

8.26.020 Definitions

For the purposes 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, contractor, subcontractor, or any other person or entity whatsoever who is required to apply to the City for the applicable permits to undertake any construction or demolition, as herein defined, project within the City.

B. “Completion” means 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.

C. “Construction” means the building, rehabilitation, remodeling, renovation, repair or enlargement of any facility or structure, or any portion thereof, and includes alterations or improvements to an existing structure.

D. “Construction and Demolition waste” or “C&D waste” means used or discarded materials removed from premises during construction or renovation or a structure resulting from construction, remodeling, repair, or demolition operations on any pavement, house, commercial building, or other structure.

E. “Covered Project” shall have the meaning set forth in Section 8.26.050.

F. “Demolition” means any dismantling, intentional deconstruction or removal of any pavement, house, commercial building, or other structure.

G. “Divert”, “Diverted” or “Diversion” means to recycle, reuse or salvage, or a combination of recycling, reusing, and salvaging, C&D waste to avoid disposal in a landfill.

H. "Diversion Requirement" means the percentage of construction and demolition waste for each project that must be diverted from landfills.

I. "Non-Covered Project" shall have the meaning set forth in Section 8.26.050.

J. "Project" means any activity that requires an application for a building or demolition permit or any similar permit from the city.

K. "Recycling" and "Reuse" means the process of collecting, sorting, treating, and reconstituting C&D waste that would otherwise be disposed of in a landfill, for use as raw material for new, reused, or reconstituted products which meet industry standards.

L. "Renovation" means any change, addition or modification in an existing structure.

M. "Salvage" means the controlled removal of materials from a project for the purpose of, reuse or storage for later reuse.

N. "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.

O. "Waste Hauler" means a company that possess a valid permit, franchise or contract with the City to collect and transport solid wastes from individuals or businesses for the purpose of recycling or disposal under the City's name.

P. "Waste Management and Diversion Plan" or "WMP" shall have the meaning set forth in Section 8.26.090.

Q. "Waste Management Plan Compliance Official" or "WMP Compliance Official" means the Director of General Services/City Clerk, or his/her designee.

R. "Waste Management Plan Summary Report" means a completed form submitted by an applicant for any covered project approved by the city for the purpose of compliance with this chapter. The form is submitted after completion of a project.

8.26.030 Diversion Requirement

All covered projects shall reuse, recycle, or divert the minimum percentage amount of designated recyclable and reusable materials as set forth by City Council resolution from landfills or disposal sites.

8.26.040 Diversion Requirement Exemption.

A. Application for Exemption: If an applicant for a covered project experiences circumstances that the Applicant believes make it infeasible to comply with the Diversion Requirement, the applicant may apply for a diversion requirement exemption at the time that he or she submits the Waste Management and Diversion Plan required under Section 8.26.060 of this Ordinance.

B. Meeting with Waste Management Plan (WMP) Compliance Official: The WMP Compliance Official shall review the information supplied by the applicant and may meet with the applicant to discuss feasible ways of meeting the diversion requirement. Based on the information supplied by the applicant, the WMP Compliance Official shall determine whether it is feasible for the applicant to meet the diversion requirement.

C. Granting of Exemption: If the WMP Compliance Official determines that it is infeasible for the applicant to meet the diversion requirements, he or she shall determine the maximum feasible diversion rate for waste generated by the project and shall indicate the new diversion requirement that the applicant shall be required to meet, and will inform the applicant in writing of the new requirement. The applicant shall then have 10 calendar days to resubmit another WMP, which is in compliance with the new diversion requirement. If the applicant fails to resubmit, or if the resubmitted WMP does not comply with Section 8.26.060, the WMP Compliance Official shall deny the WMP in accordance with Section 8.26.090.

8.26.050 Covered and Non-Covered projects

A. Covered projects: Except as specifically exempted pursuant to subsection B of this section, all construction, renovation and demolition projects within the city requiring a permit, in accordance to the covered project threshold as set forth by City Council resolution, are required to divert the designated recyclable and reusable materials from landfills. 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. A project that is under the threshold as set forth by City Council Resolution.
2. The re-roofing of any residential or commercial structure that does not include the tear-off of any portion of the existing roof (excluding concrete roof tiles and wood shake roofing).
3. Residential pool, spa, and retaining wall projects.
4. Projects in which only plumbing, electrical, or mechanical permit is required.
5. Seismic tie-down projects.
6. Projects where no structural building modifications are required.
7. Emergency demolition projects required to protect public health or safety as determined by the WMP Compliance Official.
8. Other projects that the WMP Compliance Official determines shall produce no, or on only a de minimis quantity of, C&D waste.
9. Installation of pre-fabricated patio enclosures and covers where no foundation or other structural building modifications are required.
10. Installation of pre-fabricated accessories such as signs or antennas where no structural building modifications are required.
11. A project for which a valid building or demolition permit has been lawfully issued by the City prior to the effective date of this ordinance.

C. Compliance with this Chapter shall be listed as a condition of approval on any building or demolition permit issued for a covered project.

8.26.060 Waste Management and Diversion Plan Required.

A. Prior to starting the project, every applicant shall submit a properly completed Waste Management and Diversion Plan (WMP) to the WMP Compliance Official on a form prescribed by the city, as a portion of the building and/or demolition permit process.

B. The WMP Compliance Official is authorized to create guidelines setting forth the information to be included in a WMP, as well as the form thereof. At a minimum, the WMP shall delineate all of the following:

1. The C&D waste to be generated by the covered project.
2. The square footage of the proposed project.
3. The estimated weight of the C&D waste to be generated by the covered project, listed by material types.
4. The estimated weight of the C&D waste to be generated by the covered project to be diverted, listed by material types.
5. The facility or facilities to which C&D waste will be taken, listed by material types.
6. The estimated weight of C&D materials that will be landfilled.
7. Project proposed diversion method.

C. Pursuant to Yucaipa Municipal Code Chapter 8.28, only the City's franchise waste hauler is authorized to provide roll off-bins and bin service.

8.26.070 Administrative Fee

As 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, the applicant shall pay to the city a cash fee sufficient to compensate the city for all expenses incurred in reviewing the WMP and reviewing performance of the plan. The amount of this fee shall be set forth in a resolution of the City Council.

8.26.080 Security Deposit Required

Except as otherwise specified in this chapter, every applicant shall, as part of the application for a building or demolition permit for a covered project, post a security deposit with the city 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, money order, or credit card payment to the city.

8.26.090 Review of the Waste Management and Diversion Plan

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 WMP by the WMP Compliance Official. Approval shall not be required if emergency demolition is required to protect public health or safety in accordance with section 8.26.050(B)(7) of this chapter.

B. The WMP Compliance Official shall approve a WMP only if:

1. The WMP provides all the information set forth in section 8.26.060 and complies with all guidelines as may be established by the WMP Compliance Official; and
2. The WMP indicates that the minimum diversion requirement, as established by Council resolution, of all C&D waste generated by the project shall be diverted (or new diversion goal set in accordance with the Applicant's approved Diversion Exemption request); and
3. The applicant has paid the security deposit required by section 8.26.080

8.26.100 On-Site Practices

A. During the term of the covered project, the Applicant shall recycle and reuse the required percentage of waste, and keep records of the tonnage or other measurements approved by the City that can be converted to tonnage amounts. The WMP Compliance Official will evaluate and may monitor each covered project to determine the percentage of waste salvaged, recycled or reused from the covered project as well as the tonnage of materials that was subject to disposal. For Covered projects including both construction and demolition, diversion of materials shall be tracked and measured separately. To the maximum extent feasible, project waste shall be separated on-site if this practice increases diversion. For construction and/or demolition projects, on-site separation shall include salvageable materials (e.g., appliances, fixtures, plumbing, metals, etc.) and dimensional lumber, wallboard, concrete and corrugated cardboard.

B. All onsite roll-off containers must be provided by the City's franchise waste hauler.

C. Applicants shall make every structure planned for demolition available for salvage, recycling, and reuse prior to demolition and to recover the maximum feasible amount of salvageable, recyclable, and reusable materials prior to demolition. Salvaged, recyclable, or reusable materials from the demolition shall be counted towards the diversion requirements of this chapter.

8.26.110 Reporting Requirement

A. Within thirty (30) calendar days following the completion of the demolition phase of a covered project, and again within thirty (30) calendar days following the completion of the construction phase of a covered project, the applicant shall, as a condition precedent to release of security deposit, submit documentation to the WMP Compliance Official reporting on compliance with the requirements of sections 8.26.030 and 8.26.060. The documentation shall consist of a final completed "WMP Report Summary" showing actual waste tonnage data, supported by original or photocopies of receipts and weight tags or other records of measurement

from recycling companies, landfill and/or disposal companies. In addition, where materials were recovered or salvaged recyclables and reusable materials were given away or sold on the premises, or removed to a reuse facility for storage or sale, the Applicant shall provide written supporting documentation such as letters of donation, bills of sale or other information that shall clearly document the final destination of the recovered or salvaged materials, the quantity or items that were recovered or salvaged, and the recipient of those materials. Receipts and weight tags will be used to verify whether waste generated from the covered project has been or are to be recycled, reused, salvaged or disposed. The applicant shall make reasonable efforts to ensure that all designated recyclable and reuse waste salvaged or disposed are measured and recorded using the most accurate method of measurement available.

B. To the extent practical, all construction and demolition waste shall be weighed in compliance with all applicable regulatory requirements. For construction and demolition waste for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates approved by the City for this purpose. If a covered project involves both demolition and construction, the report and documentation for the demolition project must be submitted and approved by the WMP Compliance Official before issuance of a building permit for the construction phase of a covered project.

C. The security deposit posted pursuant to section 8.26.080 shall be forfeited if the applicant does not timely meet the reporting requirements of this section, and the requirements of this section shall remain applicable notwithstanding such forfeiture of the security deposit.

8.26.120 Refund of Security Deposit

A. The WMP Compliance Official shall authorize the refund of a security deposit in the following circumstances:

1. If the WMP Compliance Official determines the security deposit was erroneously collected by the city;
2. If the building and/or demolition permit application for the covered project is withdrawn or cancelled before any work has begun; or
3. If the applicant timely submits the WMP summary and supporting documentation in compliance with section 8.26.110, demonstrating the diversion requirement required by section 8.26.030 or 8.26.040 (if applicable) has been met.

B. The WMP Compliance Official may authorize a partial refund of a security deposit if the applicant timely submits the WMP summary in compliance with the requirements of section 8.26.110, but less than the minimum diversion requirement is met. The partial refund shall not exceed a percentage of the security deposit that is equal to the demonstrated diversion rate for C&D waste generated by the covered project.

C. The WMP Compliance Official may return all of the security deposit if the diversion requirement of Section 8.26.030 or 8.26.040 (if applicable) is not met, but the WMP Compliance Official has determined that the applicant has demonstrated a good faith effort to comply with the requirements of this chapter.

8.26.130 Forfeiture of Security Deposit

If the WMP Compliance Official determines that the applicant has not made a good faith effort to comply with this Chapter, or the applicant fails to timely submit a complete and accurate WMP Summary including supporting documentation pursuant to section 8.26.110, the deposit shall be forfeited to the city.

8.26.140 Appeals

Upon payment of an appeal fee set forth in a resolution of the City Council, the Applicant may appeal to the City Manager a decision of the WMP Compliance Official to deny an exemption or withhold all or any portion of a security deposit. Notice of appeal from the decision of the WMP Compliance Official must be filed with the City Manager's Office within ten (10) calendar days from the date of the ruling of the WMP Compliance Official. The notice of appeal shall set forth in concise language the particular decision or decisions complained of and the reason why the person feels aggrieved thereby. Determinations subject to appeal would include, but not necessarily be limited to: (1) the granting or denial of an exemption; (2) whether the applicant has acted in good faith; and (3) the amount of deposit to be released. Failure to file a notice of appeal and pay the required appeal fee within the time prescribed herein constitutes a waiver of any objection to the decision(s) of the WMP Compliance Official and such decision(s) shall be final. If an appeal is timely filed, the decision of the City Manager is final.

8.26.150 Enforcement

Any person violating any provision of this Chapter shall be subject to the provisions of Title 1 of this Municipal Code, including administrative penalties pursuant to Chapter 1.13, and State law.

In addition to any remedies provided in Title 1, in the event that an applicant who is subject to the requirements set forth in this Chapter fails to comply with Section 8.26.060 (Waste Management Plan) prior to commencement of work on a covered project, the project shall be subject to a "Stop Work" order issued by the City until such WMP is submitted as required and has been approved by the WMP Compliance Official pursuant to Section 8.26.090.

Section 2. Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional, 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 passed 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, invalid, or ineffective. To this end, the provisions of this Ordinance are declared to be severable.

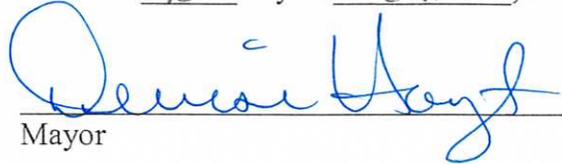
Section 3. Effective Date

This Ordinance shall take effective thirty (30) after the date of its adoption.

Section 4. Publication and Posting

The City Clerk is hereby directed to cause the following summary of this ordinance to be published by two (2) insertions in the Yucaipa News Mirror, a newspaper of general circulation that is printed, published, and circulated in the City of Yucaipa, and hereby designated for that purpose by said Council of the City of Yucaipa: “Ordinance No. 333 adding chapter 8.26, ‘Construction and Demolition Waste Diversion Program’, to Title 8, ‘Health and Safety’, of Volume I of the Yucaipa Municipal Code, enacting the diversion of construction and demolition waste from landfill disposal. The enactment will require all qualifying covered projects to divert a minimum of fifty percent of construction and demolition waste from landfills or disposal sites.”

PASSED, APPROVED AND ADOPTED this 10 day of Nov., 2014



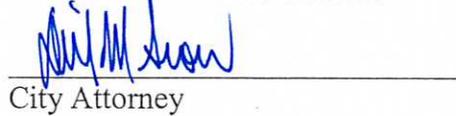
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney