



TOWN OF FAIRFAX

STAFF REPORT

August 6, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Introduction and first reading, by title only, of Ordinance No. 783, an Ordinance of the Town Council of the Town of Fairfax Amending Title 8 ("Health and Safety") of the Town Code to Add Chapter 8.14 ("Collection, Recycling, and Disposal of Waste Generated from Construction, Demolition, and Renovation Projects"). CEQA: exempt per 14 C.C.R. §§ 15061(b)(3) and 15308

RECOMMENDATION

Introduce by title only and waive first reading of Ordinance No. 783, an Ordinance of the Town Council of the Town of Fairfax Amending Title 8 ("Health and Safety") of the Town Code to Add Chapter 8.14 ("Collection, Recycling, and Disposal of Waste Generated from Construction, Demolition, and Renovation Projects"). CEQA: exempt per 14 C.C.R. §§ 15061(b)(3) and 15308

DISCUSSION

In September 2013, the Council adopted a Construction and Demolition Debris Program Ordinance. The ordinance was designed to create a process to maximize diversion of construction debris. As a matter of practice, all construction debris taken to the Marin Resource Recovery Center (MRRC) automatically gets sorted to retrieve recyclable materials. Similarly, the Redwood Landfill would sort the debris upon request and payment of an additional fee. However, should construction debris be taken to a non-certified recycling facility, there would be no requirement for diversion. This ordinance made diversion a requirement.

However, with the adoption of the new building code in December 2013, the section including the Construction and Demolition (C&C) Debris program was inadvertently deleted from the Town Code. To avoid this from happening again, the C & D ordinance will be placed in a different Chapter of the Municipal Code (i.e., Chapter 8 instead of Chapter 15). It should be noted that staff asked for, and received, voluntary compliance from applicants with the C & D ordinance, even though it did not technically exist.

Staff deferred bringing this ordinance to the Council for approval at an earlier meeting due to the anticipated length of discussion regarding items (e.g., Ordinance No. 778) on the Town's agendas. With the introduction of this ordinance, the second reading would occur on September 3rd. The Construction and Debris reporting requirements would take effect 30 days from the second reading, unless the Council wants to phase in the requirements over time (e.g., Nov. 1st).

FISCAL IMPACT

None

ATTACHMENT

Ordinance No. 783

AGENDA ITEM # 13

ORDINANCE NO. 783

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING THE TOWN CODE TO ADD CHAPTER 8.14 (COLLECTION, RECYCLING, AND DISPOSAL OF WASTE GENERATED FROM CONSTRUCTION, DEMOLITION, AND RENOVATION PROJECTS)

The Town Council of the Town of Fairfax does hereby ordain as follows:

Section 1: Title 8 (Health and Safety) of the Town Code is hereby amended by adding the following new Chapter 8.14:

CHAPTER 8.14:

§ 8.14.010. FINDINGS.

- (A) The Town finds that the State of California through its California Waste Management Act of 1989, Assembly Bill 939 (AB 939 passed and signed into law in 1989) and Alternative Compliance Act of 2008 (SB 1016 passed and signed into law in 2008), requires that each local jurisdiction in the state divert 50% of discarded materials from landfill garbage disposal on a per capita basis.
- (B) The Town finds that every city and county in California, including the Town, could face fines up to \$10,000 a day for not meeting the above mandated goal.
- (C) The Town finds that the State of California through its California Global Warming Solutions Act of 2006 (AB 32 passed and signed into law in 2006), requires that commercial generators statewide participate in recycling programs.
- (D) The Town finds that in recent years, inerts and mixed Construction and Demolition (C&D) debris constituted approximately 16% of the materials landfilled in Marin County and a similarly large portion of the waste stream in the Town. These materials have significant potential for waste reduction and recycling.
- (E) The Town finds that reusing and recycling C&D debris is essential to further the Town's efforts to reduce waste and comply with AB 939, AB 32 and other waste reduction goals.
- (F) The Town finds that C&D debris waste reduction and recycling have been proven to reduce the amount of such material in landfills, increase site and worker safety, be cost effective, and thereby assist in the protection of public health, safety and welfare.
- (G) The Town finds that, except in unusual circumstances, it is feasible to divert on average one hundred percent (100%) asphalt and concrete, and at least seventy percent (70%) of all remaining C&D debris from most construction, demolition, and renovation projects.

- (H) The Town desires to implement a program to encourage the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) goal to increase the diversion of materials from landfill and transformation facilities to achieve 80% diversion goal by 2012 and Zero Waste by 2025, ensure that resources are used to their highest potential, reduce upstream waste, and reduce Marin's ecological footprint.
- (I) The Town finds that, to ensure compliance with this Chapter and to ensure that those contractors that comply with the Chapter are not placed at a competitive disadvantage, it is necessary to impose a financial incentive as set forth by resolution of the Town Council.
- (J) The Town finds that, to ensure compliance with this Chapter, facilities will be evaluated annually through an extensive certification process conducted by the JPA.

§ 8.14.020. DEFINITIONS.

ALTERNATIVE DAILY COVER (ADC). Disposal facility cover material, other than organic waste and at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of Title 27 of the California Code of Regulations.

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 Town for the applicable permits to undertake any construction, demolition or renovation project within the Town.

AVOIDED DISPOSAL FEE. Three percent (3%) of the value of the project, not to exceed ten thousand dollars (\$10,000).

CERTIFIED RECYCLING FACILITY. A recycling, composting, materials recovery or re-use facility determined to process incoming C&D materials to divert from landfill or transformation for which the certifying agency has issued a certification.

CONSTRUCTION AND DEMOLITION WASTE (C&D WASTE). The discarded building materials from C&D activities, including but not limited to, fully-cured asphalt, concrete, brick, rock, soil, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing materials, ceramic tile, carpeting and padding, fixtures, plastic pipes, metals, tree stumps and other vegetative matter resulting from land clearing and landscaping. This does not include Hazardous Waste or Garbage and Rubbish Disposal under Town Code Chapter 8.08.

C&D DIVERSION REPORT. A report submitted by an Applicant, on a form issued by the Director, which contains an estimate of the amount of C&D waste generated by the project, documentation of the diversion of C&D waste including recycling, reuse, and Certified Recycling Facility receipts, and such additional information deemed necessary by Director to document accomplishment of the requirements of this Ordinance.

DECONSTRUCTION PROJECT. A process to carefully dismantle or remove usable materials from structures, as an alternative to demolition.

DIRECTOR. The Town Manager, including his or her designee.

DIVERSION OR DIVERTED. A reduction of the amount of waste being disposed in a landfill by any of the following methods:

1. Use of new construction methods, as described in regulations promulgated by Director, that reduce the amount of waste generated.
2. On-site re-use of the waste.
3. Delivery of the waste from the site to a Certified Recycling Facility described in Section 8.14.040.
4. Other methods as approved in regulations promulgated by the Director.

JOINT POWERS AUTHORITY or JPA. Marin County Hazardous and Solid Waste Management Joint Powers Authority.

PROJECT. A construction, demolition or renovation project for which a building permit is required under Chapter 15.04

RECYCLING. A subset of Solid Waste and means the collection of Recyclable Materials which would otherwise be discarded without receiving compensation and returning them to the economy in the form of raw materials for new, reused, or reconstituted products in compliance with AB 939 diversion requirements.

RECYCLABLE MATERIALS. Segregated residential, commercial or industrial by-products of some potential economic value, set aside, handled, packaged, or offered for collection in a manner different from refuse. Recyclable Materials include, but are not limited to, paper, glass, cardboard, plastics, ferrous metal, aluminum and green waste.

REUSE. Using an object or material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material.

§ 8.14.030. C&D DIVERSION REPORT REQUIRED.

- (A) Except as otherwise specified in this Chapter, on or after the effective date of this Chapter, each person who applies for a building permit pursuant to Chapter 15.04 of the Town Code shall complete a C&D Diversion Report, and no building permit shall be issued unless the applicant submits the C&D Diversion Report.
- (B) Except as otherwise specified in this Chapter, on or after the effective date of this Chapter, each person who applies for a building permit pursuant to Chapter 15.04 of the Town Code shall remit a C&D Diversion Report prior to final inspection and issuance of occupancy permit. An Avoided Disposal Fee may be imposed if a

permitted facility is not used or recycling/reuse receipts are not submitted prior to final inspection and issuance of occupancy permit to ensure compliance and to fund enforcement. The Avoided Disposal Fee shall be based on three percent (3%) of the value of the project, not to exceed ten thousand dollars (\$10,000).

§ 8.14.040. C&D DIVERSION REPORT EXEMPTIONS.

- (A) A C&D Diversion Report shall not be required for the following:
 - (1) Work for which a building permit is not required under Chapter 15.04 of the Town Code.
 - (2) Residential alterations of less than \$2,000 in value.
 - (3) Non-residential alterations of less than \$5,000 in value.
 - (4) Work for which only a plumbing permit, only an electrical or only a mechanical permit is required.
 - (5) Seismic tie-down projects.
 - (6) The installation or replacement of shelves.
 - (7) Installation of pre-fabricated patio enclosures and covers where no foundation or other structural building modifications are required.
 - (8) Installation of swimming pools and spas, provided that the exemption shall apply only to (a) the area to be excavated for the installation of the pool or spa and (b) the area for the pad for the pool/spa equipment that does not exceed sixteen square feet; and shall not apply to any related construction or alterations necessary for any other equipment or accessories, nor to any other portion of the project.
 - (9) Installation of pre-fabricated accessories such as signs or antennas where not structural building modifications are required.
- (B) It is unlawful to split or separate a project into small work projects for the purpose of evading the requirements of this Chapter.

§ 8.14.050. CERTIFIED C&D RECOVERY FACILITIES.

- (A) The JPA shall issue a certification only if the owner or operator of the facility submits the following documentation satisfactory to the JPA's designee:
 - (1) The facility has obtained all applicable Federal, State, and local permits, and is in full compliance with all applicable regulations; and
 - (2) The percentage of incoming waste from construction, demolition, and alteration activities that is diverted from landfill disposal, transformation and

use as ADC meets a required minimum of seventy percent (70%) or other amount as set forth in regulations promulgated by the JPA.

- (B) The Town shall make available to each building permit applicant a current list of certified C&D recovery facilities, Reuse facilities, and certified C&D haulers.

§ 8.14.060. USE OF AVOIDED DISPOSAL FEES.

- (A) Moneys received by the Town as Avoided Disposal Fees shall be used only for:
- (1) Costs of administration of the program established by this Chapter;
 - (2) Cost of programs whose purpose is to divert the waste from construction, demolition, and alteration projects from landfill disposal, transformation and use as ADC; and
 - (3) Costs of programs whose purpose is to develop or improve the infrastructure needed to divert the waste from construction, demolition and alteration projects from disposal in a landfill, transformation facility or use as ADC.

§ 8.14.070. SEVERABILITY.

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

Section 2. The adoption of this Ordinance No. 783 is exempt from the California Environmental Quality Act ('CEQA,' codified at California Public Resources Code § 21000, *et seq.*, and as further governed by the CEQA Guidelines found at 14 C.C.R. § 15000, *et seq.*) pursuant to 14 C.C.R. § 15061(b)(3), inasmuch as there is no possibility that the proposed ordinance will have a significant effect on the environment. In addition, the Town Council finds that the adoption of this ordinance is likewise exempt from CEQA through the application of 14 C.C.R. § 15308, as it is an action taken by a regulatory agency for the protection of the environment.

Section 3. Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit:

- a. Bulletin Board, Fairfax Town Hall;
- b. Bulletin Board, Fairfax Post Office; and
- c. Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

The foregoing ordinance was duly and regularly introduced at a regular meeting of the Fairfax Town Council, held in said Town on the 6th day of August, 2014, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the _____ day of September, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

DAVID WEINSOFF, Mayor

Michele Gardner, Town Clerk

Approved as to Form:

Janet E. Coleson, Town Attorney