

Agenda Report

TO: CITY COUNCIL

November 4, 2002

FROM: CITY MANAGER

SUBJECT: INTRODUCTION AND FIRST READING OF AN ORDINANCE ADDING CHAPTER 8.62 OF THE PASADENA MUNICIPAL CODE ESTABLISHING A REQUIREMENT TO SUBMIT AND COMPLY WITH A WASTE MANAGEMENT PLAN FOR CERTAIN CONSTRUCTION AND DEMOLITION PROJECTS WITHIN THE CITY OF PASADENA.

Recommendation

It is recommended that the City Council:

1. Acknowledge that the ordinance adding Chapter 8.62 , A Waste Management Plan for Certain Construction and Demolition Projects within the City of Pasadena, is exempt from the California Environmental Quality Act. Pursuant to CEQA Guidelines, General Rule, Section 15061 (b)(3), the proposed project does not have the potential to result in a significant effect on the environment under CEQA.
2. Approve the first reading to adopt Chapter 8.62 of the Pasadena Municipal Code, a Waste Management Plan for Certain Construction and Demolition Projects within the City of Pasadena to divert waste generated in the construction process from landfills to beneficial use to increase the City's recycling diversion rate.
3. Direct the City Clerk's office to file the Notice of Exemption with the Los Angeles County Recorder's office.

Background

On August 19, 2002, City Council directed the City Attorney to draft an ordinance establishing a waste management plan for certain construction and demolition

projects within the City of Pasadena. Implementation of such a waste management plan ordinance is a critical component of the Plan of Correction that was submitted to the California Integrated Waste Management Board on September 5, 2002, requesting a time extension to achieve 50 percent disposal diversion as mandated by AB 939. A time extension was granted that will expire on December 31, 2003.

Outreach

Staff held two workshops, September 23 and October 8, 2002, for contractors and developers to introduce them to the pending ordinance. Letters of invitation were sent to over 400 contractors from a list supplied by the Planning and Development Department and the State Contractors License Board. Additionally, 500 flyers were also placed on the Permit counter announcing the October 8 meeting.

The first workshop outlined the objectives of the proposed ordinance and discussed key sections. The second workshop was a review of the draft language. Both workshops provided an opportunity for questions, answers and suggestions. Written comments were accepted until the close of business on October 11.

Service Implications:

Construction and demolition recycling and the concept of being environmentally friendly are becoming an industry standard. Studies have determined that businesses planning for reuse, salvage and recycling at the front end of a project can reduce material handling and disposal fees; these fees should be weighed against avoided costs to haul and dispose of materials and the value of materials that are recovered. Well-planned projects can also save money by specifying the same size and type of materials as the old construction, using standard sizes and ordering to minimize waste. Companies may also receive tax write offs for donated materials as well as enhance their corporate image.

Typical materials suitable for reuse include plumbing fixtures, doors, cabinets, windows, carpeting, bricks, light fixtures, ceiling and floor ties, wood, HVAC equipment and decorative items. Typical materials recycled from building sites include metals, lumber, asphalt, concrete, roofing materials, corrugated cardboard and wallboard. Packaging material is often a significant portion of debris produced during renovation and new construction and should also be recycled.

The demolition phase of the City's Glenarm Power Plant renovation project will produce enough gravel for a road bed two miles long and additional concrete will be crushed for use as fill on the site. Enough steel to construct a one-story building has been removed and recycled and much more steel will be recycled

from abandoned tanks. The contractor has also shipped some of the concrete rebar to a smelter. The demolition phase is scheduled for completion by the first week of December.

Environmental Impact

The environmental Administrator has determined that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 1506 (b) (3), which states the following: "(t)he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

Fiscal Impact

Adopting a Waste Manage Plan for Certain Construction and Demolition Projects is one of several programs that the City of Pasadena is enacting in order to reduce the amount of debris taken to landfills and therefore to reduce the potential for fines to be levied or penalties imposed by the State of California.

Anticipated expenditures of \$7,500 for outreach and education to contractors and developers in the form of printed materials, direct mailing, and meetings with contractors to promote understanding of the requirements of the ordinance have been factored into the Refuse Fund five-year projection and adequate funds are available in 8114-406-764200 and 8101-406-764200. The Performance Security Deposit and Administrative fees to cover time and materials to assure compliance with the requirement of the ordinance will be recovered with a deposit fee set by Council resolution and imposed on each covered project.


Respectfully submitted,


Cynthia J. Kurtz
City Manager

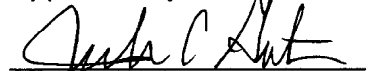
Prepared by:


Carolyn Meredith, Recycling Coordinator
Street Maintenance and Integrated Waste Management

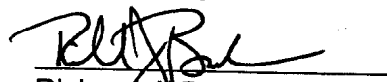
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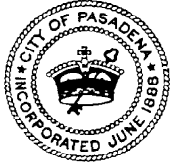

Jimmy S. Berryhill, Administrator
Street Maintenance and Integrated Waste Management

Approved by:


Julie A. Gutierrez, Director
Public Works Department

Concurred by:


Richard J. Bruckner
Director of Planning and Development



Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: November 4, 2002

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA ADDING CHAPTER 8.62 TO TITLE 8 OF THE PASADENA MUNICIPAL CODE ESTABLISHING A REQUIREMENT TO SUBMIT AND COMPLY WITH A WASTE MANAGEMENT PLAN FOR CERTAIN CONSTRUCTION AND DEMOLITION PROJECTS WITHIN THE CITY OF PASADENA

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA ADDING CHAPTER 8.62 TO TITLE 8 OF THE PASADENA MUNICIPAL CODE ESTABLISHING A REQUIREMENT TO SUBMIT AND COMPLY WITH A WASTE MANAGEMENT PLAN FOR CERTAIN CONSTRUCTION AND DEMOLITION PROJECTS WITHIN THE CITY OF PASADENA

SUMMARY:

The purpose of this ordinance is to reduce landfill waste from construction and demolition activity by requiring those who undertake specific "covered projects" to divert, or recycle, a minimum of 50% of the construction and demolition debris resulting from their projects.

The following projects are "covered projects" under the ordinance: (1) Residential additions of 1,000 square feet or more of gross floor area; (2) Tenant improvements of 3,000 square feet or more of gross floor area; (3) New structures of 1,000 square feet or more of gross floor area; (4) Demolition of 1,000 square feet or more of gross floor area, and (5) All City public works and construction projects which are awarded pursuant to the competitive bid procedure established by Chapter 4.08 of the Pasadena Municipal Code.

Applicants for a covered project are required to submit a Waste Management Plan along with the application for a construction or demolition permit and to submit performance security at rates set by resolution of the City Council.

The performance security will be returned on a determination of compliance with the requirements of this ordinance. However, if there is non-compliance, the performance security will be retained to satisfy any fines or civil penalties.

An exception process is established for this ordinance to provide relief for applicants where there are exceptional or extraordinary circumstances applicable to the project that do not apply generally to similar projects. An appeal process is established for certain decisions under the ordinance.

Finally, there are administrative, civil and criminal penalties established for the specified violations of the ordinance.

REASON WHY LEGISLATION IS NEEDED:

Regulations of this nature can only be established by ordinance of the City Council.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

The Department of Public Works and the Department of Planning and Development will be primarily affected by this proposed ordinance.

FISCAL and SERVICE IMPLICATIONS AND ENVIRONMENTAL REVIEW:

Fiscal and service implications and environmental review are discussed in the concurrently filed agenda report.

Respectfully submitted,


Michele Beal Bagnaris
City Attorney

Prepared by: 10/22/02



Nicholas George Rodriguez
Assistant City Attorney

Concurrence:



Cynthia J. Kurtz
City Manager

Introduced by Councilmember

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING CHAPTER 8.62 TO TITLE 8 OF THE PASADENA MUNICIPAL CODE ESTABLISHING A REQUIREMENT TO SUBMIT AND COMPLY WITH A WASTE MANAGEMENT PLAN FOR CERTAIN CONSTRUCTION AND DEMOLITION PROJECTS WITHIN THE CITY OF PASADENA

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

"SUMMARY

The purpose of this ordinance is to reduce landfill waste from construction and demolition activity by requiring those who undertake specific "covered projects" to divert, or recycle, a minimum of 50% of the construction and demolition debris resulting from their projects.

The following projects are 'covered projects' under the ordinance: (1) Residential additions of 1,000 square feet or more of gross floor area; (2) Tenant improvements of 3,000 square feet or more of gross floor area; (3) New structures of 1,000 square feet or more of gross floor area; (4) Demolition of 1,000 square feet or more of gross floor area, and (5) All City public works and construction projects which are awarded pursuant to the competitive bid procedure established by Chapter 4.08 of the Pasadena Municipal Code.

Applicants for a covered project are required to submit a Waste Management Plan along with the application for a construction or demolition permit and to submit performance security at rates set by resolution of the City Council.

Ordinance No. _____ shall take effect 30 days following its publication by title and summary."

SECTION 2. Title 8 of the Pasadena Municipal Code is amended by adding a new Chapter 8.62 to read:

"Chapter 8.62

**WASTE MANAGEMENT PLAN FOR CERTAIN CONSTRUCTION AND
DEMOLITION PROJECTS WITHIN THE CITY OF PASADENA**

Sections:

- 8.62.010 Short title.
- 8.62.015 Purposes of ordinance.
- 8.62.020 Definitions.
- 8.62.030 Application of chapter to covered projects.
- 8.62.031 Required diversion rates.
- 8.62.035 Projects exempt from chapter.
- 8.62.040 Waste management plan requirements.
- 8.62.050 Performance security.
- 8.62.060 Review of waste management plan.
- 8.62.070 Waste management plan compliance reporting.
- 8.62.075 Release of performance security.
- 8.62.080 Exception from compliance with this chapter.
- 8.62.090 Appeal.
- 8.62.095 Violation of this chapter.
- 8.62.100 Prosecution of violations.
- 8.62.110 Penalties and administrative proceedings.
- 8.62.150 Severability.

8.62.010 Short title.

This ordinance shall be known and designated as the 'construction and demolition waste management' ordinance.

8.62.015 Purposes of ordinance.

The purpose of this ordinance is to reduce landfill waste by requiring an applicant for every covered project to divert a minimum of 50% of the construction and demolition debris resulting from that project in compliance with state and local statutory goals and policies and to create a mechanism to secure compliance with the stated diversion requirement.

8.62.020 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, or any other entity whatsoever who applies to the city for any permit, as defined in this chapter, and who is, therefore, responsible for meeting the requirements of this chapter.

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 or enlargement of any structure, or any portion thereof, and includes, without limitation, alterations or improvements to an existing structure.

D. 'Construction and demolition debris' means the excess or discarded materials which are to be removed from a site during or after the construction or demolition of any structure, fence, wall or paving.

E. 'Conversion rate' means 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 director of public works and filed with the city clerk.

F. 'Covered project' means any project meeting the thresholds set forth in Section 8.62.030.

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

H. 'Deconstruct' and 'deconstruction' mean the careful and systematic dismantling of a structure in order to salvage materials for diversion.

I. 'Director' means the director of public works who is hereby designated to issue a compliance order or an administrative citation to enforce this chapter pursuant to Chapter 1.25 or 1.26, respectively, of this code.

J. 'Divert' and 'diversion' means the reuse of construction and demolition debris to avoid disposal in a landfill.

K. 'Diversion requirement' means the diversion of a minimum of 50% of the total construction and demolition debris generated by a project, or the lower percentage requirement granted by exception pursuant to Section 8.62.080.

L. 'Paving' means driveways, walkways, parking areas, streets and sidewalks.

M. 'Performance security' means cash, certified or cashiers' check, certificate of deposit, a letter of credit or other security in a form approved by the director of public works.

N. 'Permit' means any building or demolition permit.

O. 'Project' means any proposal for new or changed use, or for new construction, alteration or enlargement of any structure, that requires a permit from the city of Pasadena.

P. 'Recycling' and 'reuse' mean 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.

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

R. 'Waste management plan' means an application packet approved by the director of public works for the purpose of reviewing project compliance with the provisions of this chapter.

S. 'Waste management plan compliance official' means the administrator of the solid waste division of the department of public works.

8.62.030 Application of chapter to covered projects.

A. Unless otherwise exempt under Section 8.62.035, projects by the city or by any applicant meeting the following thresholds shall be considered covered projects, shall meet the diversion requirement and shall comply with all provisions of this chapter:

1. residential additions of 1,000 square feet or more of gross floor area;
2. tenant improvements of 3,000 square feet or more of gross floor area;
3. new structures of 1,000 square feet or more of gross floor area;
4. demolition of 1,000 square feet or more of gross floor area; and
5. all city public works and city public construction projects which are awarded pursuant to the competitive bidding procedure established by Chapter 4.08 of this code.

B. Compliance with the provisions of this chapter shall be listed as a condition of approval on all building or demolition

permits issued for a covered project.

8.62.031 Required diversion rates.

The applicant for a covered project shall divert a minimum of 50% of the construction and demolition debris resulting from the project.

8.62.035 Projects exempt from chapter.

The following projects are exempt from the requirements of this chapter:

A. Immediate or emergency demolition required to protect the public health, safety or welfare, as determined by any public safety official or code compliance officer of the city given prior to demolition.

B. Projects in any single family residential district which consist solely of either an accessory structure, as defined in Title 17 of this code, or a swimming pool.

C. A project for which an exception, conditional use permit or design review approval has been obtained from the city prior to the effective date of this ordinance.

D. A project for which a valid building permit has been lawfully issued by the city prior to the effective date of this ordinance.

E. A project of city public works or city public construction for which the notice inviting bids has been published pursuant to Chapter 4.08 of this code prior to the effective date of this ordinance.

8.62.040 Waste management plan requirements.

All applicants for covered projects shall complete and submit a waste management plan as part of the application packet for a permit issued for a covered project. The waste management plan shall include the following information, calculated with the conversion rate, and shall be attested by the applicant, under penalty of perjury, as true

and correct for all stated facts and as a best estimate based on all information reasonably available about the project, where all of the facts cannot be ascertained:

1. the estimated volume or weight of construction and demolition debris, listed for each material;
2. the estimated volume or weight of construction and demolition debris that can be diverted, listed for each material;
3. the estimated volume or weight of construction and demolition debris that will be landfilled as solid waste;
4. the identification of the vendor or facility that will collect or receive the construction or demolition debris or that will deconstruct the structure, and
5. the estimated date on which demolition or construction is to commence.

8.62.050 Performance security.

Applicants for permits for a covered project shall submit a performance security with the waste management plan. The rate for the performance security shall be set by resolution of the city council. The waste management plan compliance official may waive the performance security if the total performance security would be 50 dollars or less.

8.62.060 Review of waste management plan.

A. Time for Review. A waste management plan shall be approved or denied no later than 15 business days after a complete application is made. The approval may be based on imposed conditions reasonably necessary to meet the standards of this chapter.

B. Approval. Notwithstanding any other provision of this chapter, no permit shall be issued for any covered project unless and

until the waste management plan has been approved, based upon the following findings by the waste management plan compliance official.

1. all of the information required by Section 8.62.040 has been provided;

2. the plan establishes a mechanism such that the diversion requirement shall be met; and

3. the applicant has submitted performance security in compliance with Section 8.62.050.

B. Denial. If the waste management plan compliance official denies the waste management plan, then the grounds for denial shall be clearly stated, in writing.

8.62.070 Waste management plan compliance reporting.

A. Monthly Reports. Monthly reports shall be submitted on a form provided by the director certifying recycling activities for each covered project to date.

B. Final Report. No later than 30 days from the completion of a covered project, the applicant shall submit a compliance reporting form, under penalty of perjury, to the waste management compliance official. The form shall include the following information:

1. the dates demolition and construction actually commenced;

2. the actual volume or weight of construction and demolition debris, listed for each material;

3. the actual volume or weight of construction and demolition debris that was diverted, listed for each material;

4. a specification of the method used to determine the volumes and weights and a certification that the method used was the most accurate, commercially reasonable method available; and

5. original receipts from all vendors and facilities which

collected or received construction and demolition debris, indicating actual weights and volumes received by each.

8.62.075 Release of performance security.

No later than 15 business days from the date a complete compliance reporting form is submitted, the waste management compliance official shall determine whether the applicant has complied with the requirements of this chapter, and the following shall occur:

A. On a determination of compliance with the requirements of this chapter, the performance security shall be returned to the applicant within 5 business days of determination.

B. On a determination of non-compliance with the requirements of this chapter, prosecution or other administrative proceedings shall be recommended, and the performance security shall be retained by the waste management compliance official pending the conclusion of all such proceedings, or a determination by the responsible official not to commence proceedings. At the conclusion of all such proceedings, the waste management compliance official may draw upon the performance security to satisfy any fines, civil penalties, late payment penalties, administrative fees and other related charges assessed against the applicant. Any balance remaining thereafter shall be returned to applicant within 5 business days of conclusion of all proceedings.

8.62.080 Exception from compliance with this chapter.

Prior to commencing demolition or construction, an applicant wishing relief from the requirements of this chapter may seek an exception, partial or complete, from the requirements of this chapter through the following process:

A. Initiation. The exception process shall be initiated by the

filing of a complete exception application with the waste management plan compliance official. The waste management plan compliance official shall determine the completeness of the exception application within 5 business days of the filing of the application.

B. Decision on Application. Following consideration of the exception application, the waste management plan compliance official shall either make the required findings and take action on the application; or shall state why the findings cannot be made and deny the application. A decision on the application shall be rendered within 10 business days following determination the application is complete.

C. Findings. All of the following findings must be made prior to the approval of an exception:

1. there are exceptional or extraordinary circumstances or conditions applicable to the project that do not apply generally to similar projects;

2. granting the application will not constitute a grant of special privilege inconsistent with limitations imposed on like projects; and

3. cost to the applicant of strict compliance with this chapter is not the primary reason for granting the exception.

8.62.090 Appeal.

Any person or entity aggrieved by any decision or finding under the provisions of this chapter with respect to approving or to denying a waste management plan, or to granting or denying an application for an exception from compliance with this chapter, may appeal such decision or finding. An appeal must be filed within 3 days after receipt of notice of any protested decision or finding by filing with the director of public works a letter of appeal briefly stating

therein the basis for such appeal. A hearing shall be held on a date no more than 10 days after receipt of the letter of appeal. Appellant shall be given at least 5 days' notice of the time and place of the hearing. A hearing officer, appointed by 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. At the conclusion of the hearing, the hearing officer shall make a final and conclusive determination. The appeal process set forth in this section does not apply to administrative citations pursuant to Chapter 1.25 or to orders to comply pursuant to Chapter 1.26.

Section 8.62.095 Violation of this chapter.

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

- A. To wilfully fail to comply with any provision of this chapter.
- B. To provide false or misleading information in any plan, report or document required by this chapter.
- C. To fail to meet the diversion requirement for any covered project.

8.62.100 Prosecution of violations.

A violation of any provision of this chapter shall be prosecuted as a misdemeanor or infraction at the option of the city prosecutor and as further set forth in Section 8.62.110 with respect to penalties and administrative proceedings.

8.62.110 Penalties and administrative proceedings.

A. Misdemeanors. Any person who violates any provision of Section 8.62.095(A) or (B) is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment.

B. Infractions. Any person who violates Section 8.62.095(C) or any other provision of this chapter is guilty of an infraction and shall be punished by a fine as established in Section 1.24.025. Each person convicted may be deemed guilty of a separate offense for every day during any portion of which any violation is committed or permitted. For violations of Section 8.62.095(C), the violation shall be considered to commence on the date when demolition or construction first commenced, and this date is rebuttably presumed to begin on the commencement date provided by the applicant in the waste management plan.

C. In addition to the penalty provisions of subsections A and B of this section, violations of this chapter may be subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of this code, including, but without limitation, civil penalties, late payment penalties, administrative fees, other related charges as established by resolution of the city council.

8.62.120 Remedies not exclusive.

To the maximum extent permitted by law, administrative remedies specified in this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

8.62.150 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 city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter irrespective of the 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 3. The city clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 4. This ordinance shall take effect 30 days following publication by title and summary.

Signed and approved this day of , 2002.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the
City Council of the City of Pasadena at its meeting held
2002, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

PUBLISHED:

Jane L. Rodriguez, CMC
CITY CLERK

APPROVED AS TO FORM: *10/22/02*



Nicholas George Rodriguez
Assistant City Attorney