



NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 23

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2019-15: Amending Newport Beach Municipal Code
Chapter 6.04 – *Garbage, Refuse and Cuttings* and Adding Chapter
6.06 – *State Mandated Municipal Solid Waste Diversion Programs*

ABSTRACT:

California’s Department of Resources Recycling and Recovery (CalRecycle) enforces standards established by the state legislature for solid waste diversion in California in an effort to restore, protect and enhance the environment to ensure public health, environmental quality and economic viability. To succeed in their mission, CalRecycle requires local jurisdictions to implement programs that reduce the amount of solid waste going to landfills. The State of California has passed several laws to mandate commercial recycling and the diversion of organic materials from the waste stream by businesses throughout the state. These laws put the responsibility on each local jurisdiction to ensure these programs are in place and to complete significant reports and documentation for CalRecycle on an annual basis. As such, the City is required to update its Municipal Code in order to successfully implement these programs and be in compliance with this legislation.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-15, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Portions of Chapter 6.04 and Other Related Provisions of the Newport Beach Municipal Code and Adding Chapter 6.06 to Title 6 of the Newport Beach Municipal Code to Incorporate State Mandates on the Diversion of Municipal Solid Waste*, and pass to second reading on September 24, 2019.

FUNDING REQUIREMENTS:

Although there is no direct fiscal impact to the City with regard to approval of these Municipal Code modifications, there will eventually be increased cost to the City as well as commercial and residential customers for increased refuse handling, processing and disposal costs in order to comply with these recent state law changes.

DISCUSSION:

In early 2017, California's Department of Resources Recycling and Recovery (CalRecycle), the state agency that oversees compliance with waste reduction mandates in California, nearly initiated enforcement action against the City for low compliance rates with regard to Assembly Bill 341 (AB 341) and Assembly Bill 1826 (AB 1826). AB 341 requires businesses and multifamily complexes of five units or more to implement a recycling program for dry recyclables (paper plastic, glass, aluminum, cardboard, etc.) on or before July 1, 2012. AB 341 requires the City to provide a recycling program for these materials (either directly or through the City's franchisees) on or before July 1, 2012. AB 1826, effective January 2016, requires certain businesses to recycle organic waste, defined as food waste, green waste, wood waste, and food-soiled paper. AB 1826 also requires multifamily complexes of five units or more to recycle green and wood waste. AB 1826 requires the City to provide recycling programs for organic waste by the same date. In order to avoid referral to CalRecycle's Jurisdiction Compliance Unit (JCU), the City committed, in a letter to CalRecycle dated March 21, 2017, to take following actions:

- 1) Revise its solid waste franchise agreement to require franchise haulers to conduct AB 341 and AB 1826 outreach and recycling program implementation.
- 2) Notify all non-compliant businesses annually via direct mail of their requirements to comply with AB 341 and AB 1826.
- 3) Revise the City municipal code to require businesses and multifamily complexes of five units or larger to comply with AB 341 and AB 1826 or face penalties.

The above written commitments from the City were sufficient to avoid further compliance action from CalRecycle to date because the City has been making adequate progress toward fulfilling each of these commitments. City staff has prepared a draft set of more detailed requirements for the commercial franchise holders regarding program implementation for both dry recyclables and organic waste. This will soon be brought to the City Council for approval, in order to fulfil the City's commitment in item #1 above. The City has completed item #2 above by notifying non-compliant businesses and multifamily complexes of the requirements to comply with AB 341 and AB 1826. The Municipal Code revision that is now being presented to the City Council will honor the City's commitment to CalRecycle for item #3 above and will move the City significantly closer to compliance with AB 341 and AB 1826.

Staff has completed a draft municipal code revision that mirrors the requirements of AB 341 and AB 1826 and would require certain businesses and multifamily complexes of five units or more to implement recycling programs or face administrative penalties.

Specifically, the proposed new Chapter 6.06 of the municipal code would require the following:

1. AB 341 Compliance:

- a. Requires commercial and multi-family customers that generate four or more cubic yards of waste per week to implement programs to recycle paper, plastic, glass, aluminum, etc. per AB 341.
- b. Compliance pathways include implementing an internal recycling program (i.e. bottle and can recycling, paper shredding, etc.), subscribing to a franchise hauler-provided recycling program or mixed-waste processing program, self-hauling recyclables, or donating recyclables.

2. AB 1826 Compliance:

- a. Requires commercial customers that generate four or more cubic yards of waste per week to implement recycling programs for food waste, green waste, food soiled paper, and wood waste.
- b. Multi-family customers are required to implement programs to recycle green and wood waste but not food waste or food soiled paper.
- c. Compliance pathways include implementing an internal organics recycling program (i.e. onsite composting, landscaper hauls green waste to a composting facility, etc.), subscribing to a franchise hauler-provided organics recycling program, self-hauling organics to an organics recycling facility, and/or donating edible food waste.

3. Special events

- a. All Level 2 and 3 special events (1,000+ attendees) will be required to have AB 341 and AB 1826 recycling programs in place for attendees.
- b. The ordinance establishes a modest security deposit that is refunded upon demonstration the special event complied with the ordinance.

4. Waivers

- a. The City has the ability to grant exemptions for 1) businesses and multifamily complexes that demonstrate there is insufficient space to house the additional container(s) (carts or bins) needed to comply with AB 341 and AB 1826; and 2) for businesses that generate very small quantities of organic waste.

5. Enforcement

- a. The City may assess administrative penalties to businesses and multifamily complexes that do not have the required recycling programs in place after a 30-day notice of violation.
- b. Per the City's existing commercial non-exclusive franchises, franchisees will report non-compliant accounts to the City on a monthly basis.

When Section 6.04 of the City's code was originally adopted, it applied to all types of properties and recycling requirements were not yet anticipated. With the revisions to Section 6.06 related to commercial and multifamily properties, Section 6.04 required updates to remove conflicting language with the new diversion requirements.

Therefore, the Municipal Code has been updated to reflect these diversion requirements and to ensure all code sections are consistent with this amendment. This includes updating definitions, eliminating outdated definitions and provisions, and updating requirements for solid waste, recyclable materials and organics storage, collection and related health and safety issues.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

- Attachment A – Ordinance No. 2019-15 (clean version)
- Attachment B – Ordinance No. 2019-15 (redline version)