

ATTACHMENT A

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

WHEREAS, Assembly Bill 939 ("AB 939"), codified in Public Resources Code Section 40000 *et. seq.*, requires the City of Newport Beach ("City") to divert a minimum of fifty percent (50%) of the municipal solid waste generated from landfill disposal;

WHEREAS, AB 939 was amended by Assembly Bill 341 ("AB 341"), as codified in Public Resources Code Section 41780.01, in 2011 to establish a statewide goal of diverting seventy-five percent (75%) of all municipal solid waste from landfill by 2020 and to require all local government jurisdictions to provide a commercial recycling program to businesses and to multi-family developments of five (5) units or larger by July 1, 2012;

WHEREAS, AB 341 also required all businesses generating more than four (4) cubic yards per week of commercial municipal solid waste and all multi-family dwellings of five (5) units or more, to arrange for recycling services by July 1, 2012;

WHEREAS, AB 939 was further amended by Assembly Bill 1826 ("AB 1826"), codified in Public Resources Code Section 42649.82, in 2014 to require the City to provide a diversion program for collection and diversion of food scraps (including food-soiled paper mixed in with food scraps), green waste and non-hazardous wood, on or before January 1, 2016;

WHEREAS, AB 1826 also required businesses generating certain quantities of food scraps, green waste and wood to participate in a diversion program according to a specified schedule beginning with participation by the largest generators of these materials on or before April 1, 2016; and participation by additional generators of these materials by January 1, 2017, and by January 1, 2019, depending upon the quantity of food scraps, green waste and wood generated (Public Resources Code Section 42649.81);

WHEREAS, AB 939 was amended by Assembly Bill 1594, codified in Public Resources Code Section 41781.3, in 2014 to phase out the use of green waste as alternative daily cover at landfills and no longer allow the City to receive diversion credit for such use on or after January 1, 2020;

WHEREAS, adoption of a program for the diversion of municipal solid waste is essential for the City to comply with Public Resources Code Section 40000 *et. seq.* and failure to comply can result in fines, penalties and compliance orders assessed against local agencies; and

WHEREAS, it is in the best interest of the City to adopt amendments to Chapter 6.04 and other related provisions of the Newport Beach Municipal Code and add Chapter 6.06 to Title 6 of the Newport Beach Municipal Code to incorporate state mandates for the diversion of municipal solid waste.

NOW THEREFORE, the City Council of the City of Newport Beach hereby ordains as follows:

Section 1: Section 1.12.020(B) of Chapter 1.12 of Title 1 of the Newport Beach Municipal Code is hereby amended to read as follows:

B. The Fire Chief, Public Works Director and Harbormaster, and members of the staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Titles 11 and 17, Chapters 7.04, 7.16 and 7.20, Sections 6.04.050, 6.04.190 and 10.06.010, the Fish and Game Code of the State of California, Title 14 of the California Code of Regulations, the provisions of the Health and Safety Code of the State of California that pertain to animals and the provisions of Chapter 5 of Division 3 of the Harbors and Navigation Code of the State of California.

Section 2: Section 1.12.020(D) of Chapter 1.12 of Title 1 of the Newport Beach Municipal Code is hereby amended to read as follows:

D. The Public Works Director and department staff designated by the director shall have the power to issue citations for any violation of Chapters 6.04 and 6.06 of this Code.

Section 3: The Table of Contents for Chapter 2.08 of Title 2 of the Newport Beach Municipal Code titled "City Manager" is hereby amended to read as follows:

**Chapter 2.08
CITY MANAGER***

Sections:

- 2.08.010 Establishment Authority.
- 2.08.020 Bond for Manager Pro Tempore.
- 2.08.030 Compensation—Expenses.
- 2.08.040 Powers and Duties.

2.08.050 Removal.

2.08.060 Subject to Civil Service Provisions.

* Responsibilities and duties for civil service—See Section 2.24.060.

Amount of bond—See Chapter 2.16.

Power and duty to restrict water use—See Chapter 14.16.

Administrative authority over department heads—See Chapter 2.12.

Business licensing and regulation duties—See Title 5.

Administration of garbage collection service—See Chapters 6.04 and 6.06.

Water shortage duties—See Chapter 14.16.

Section 4: Chapter 6.04 of Title 6 of the Newport Beach Municipal Code titled “Garbage, Refuse and Cuttings” is hereby amended in its entirety to read as follows:

Chapter 6.04
GARBAGE, REFUSE AND CUTTINGS*

Sections:

6.04.010 Purpose and Intent.

6.04.020 Definitions.

6.04.030 Nuisance Declared.

6.04.040 Leaf Blowers.

6.04.050 Disposal on Public Property Prohibited.

6.04.060 Collection of Solid Waste.

6.04.070 Containers.

6.04.080 Solid Waste and Divertible Material Container and Bulky Item Requirements.

6.04.090 Commercial and Multi-Family Bin and Wheeled Cart Requirements.

6.04.100 Prohibited Materials.

6.04.110 Accumulation Limitation.

6.04.120 Storage and Placement of Containers, Boxes, Bags or Bulky Items for Collection.

6.04.130 Administration of Collection Service.

6.04.140 Costs Defrayed From Ad Valorem Tax Revenue.

6.04.150 Removal of Construction and Demolition Debris.

6.04.160 Public Solid Waste and Public Recyclable Material Containers.

6.04.170 Prohibition of Commercial Use of Public Solid Waste or Public Recyclable Material Containers.

6.04.180 Prohibition on Private Use of Public Solid Waste or Public Recyclable Material Containers on Balboa Island.

6.04.190 Tampering with Public Solid Waste or Public Recyclable Material Containers.

6.04.200 Prohibited Disposal.

6.04.210 Persons Required to Clean Sidewalks.

6.04.220 Burying of Solid Waste or Recyclable Material Prohibited.

6.04.230 Violation, Penalties and Enforcement.

* Water and sewers—See Title 14.

6.04.010 Purpose and Intent.

The City Council finds and declares that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by providing minimum standards for the safe and sanitary collection, storage, transportation and solid waste, green waste, and recyclable material generated within the City.

6.04.020 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in Chapter 6.06 shall have the same meanings herein unless expressly defined in this chapter. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

“Beach” means and includes all the shore of the Pacific Ocean lying southerly of the most southerly line of the public street nearest and parallel to the ocean and all the shore of the harbor, and any bay or channel in the City.

“Bin” means an open top metal wheeled rectangular container with attached plastic or metal lid(s), used for storage of solid waste, recyclables, green waste, wood, food scraps, construction and demolition debris or other materials.

“Cart” means a container with a hinged lid and wheels collected by an automated or semi-automated truck, which come in a variety of sizes including, but not limited, a capacity of 22-25 gallons, 32-35 gallons, 62-65 gallons and 90-95 gallons.

“Garbage, refuse, and cuttings” shall have the same definition as set forth in the applicable portions of Ordinance 1403, adopted on November 8, 1971 and Ordinance 1508 adopted March 25, 1974.

“Green waste” means trimmings from trees or shrubs, plants, grass cuttings, or removed or discarded branches, shrubs, plants, leaves or other materials generated from landscapes or gardens.

“Municipal solid waste” or “solid waste” means all discarded putrescible and nonputrescible solid, and semi-solid waste generated in or related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, and other solid and semi-solid wastes, but does not include (i) recyclables, food scraps, green waste, wood waste or construction and demolition debris that have been separated and segregated from municipal solid waste for diversion; or (ii) liquid wastes, abandoned vehicles, auto parts, hazardous, biohazardous or biomedical wastes.

“Public solid waste container” and “public recyclable material container” shall mean all solid waste and divertible/recyclable material containers suitable for the storage and collection of solid waste or divertible/recyclable material which are procured, placed and maintained on public property in accordance with this chapter.

“Recyclable material” or “recyclables” means items in the solid waste stream which can be reused or processed into a form suitable for reuse consistent with the requirements of State law including, but not limited to, aluminum and tin cans, glass bottles, plastic bottles, plastic containers, newspaper, paper, printed materials, paper containers, cardboard and textiles. Recyclable material does not include green waste, wood waste, food scraps or construction and demolition debris.

6.04.030 Nuisance Declared.

The accumulation and existence of solid waste or divertible material on any private premises, on, in, or upon any beach, street, alley or other public place within the City is hereby declared to be a public nuisance. No person who owns, leases, controls, occupies or has charge of any premises in the City shall cause, permit or allow any public nuisance to exist thereon.

6.04.040 Leaf Blowers.

A. Definitions.

1. "Leaf blowers" shall mean any air blowing machine that uses a concentrated stream of air to push, propel or blow dirt, dust, leaves, grass clippings, trimmings, green waste, solid waste or debris. This definition shall include "mechanical blowers" as that term is used in Chapter 10.28. "Leaf blowers" shall not include any leaf or refuse vacuum.
2. "Common interest development" and "association" shall be defined as those terms are defined in California Civil Code Section 1351 or any successor statute.

B. Use of Leaf Blowers.

1. Leaf blowers may be used and operated to sweep or clean any surface of dirt, dust, leaves, grass clippings, trimmings, or debris only if the green waste, solid waste or debris so swept or blown are not left in or upon any adjacent or other parcel, any street, public place or right-of-way, public beach, or on the shore, or in the waters of Newport Bay.
2. The hours of operation and maximum noise levels shall be subject to the provisions of Chapter 10.28.
3. Operation of Gas Powered Leaf Blowers in Residential Districts Prohibited. Gas powered leaf blowers shall not be operated in any district identified in Title 20 of this Code as a district zoned for residential use or areas designated for residential use as part of a Planned Community (PC) or Specific Area Plan, with the exception of operations or locations described in subsections (B)(3)(a) through (e) of this section:
 - a. Residential common interest developments of five (5) or more dwelling units with an association responsible for establishing regulations or operating rules controlling the management and maintenance of their exterior residential environment may, by the method set out in their association's rules and regulations, choose to be exempt from the restrictions contained in this section. The Office of the City Manager shall establish procedures through which such residential common interest developments may demonstrate their decision to be exempt from this section.
 - b. The maintenance, repair or improvement of any public work or facility by public employees, by any person or persons acting pursuant to a public works contract, or by any person or persons performing such work or pursuant to the direction of, or on behalf of, any public agency.
 - c. Maintenance of golf courses and golf practice facilities conducted between the hours of 6:00 a.m. and 8:00 p.m., and maintenance of other nonresidential uses appurtenant to golf course uses between the hours of 7:00 a.m. and 8:00 p.m.
 - d. Areas designated for nonresidential uses located in a Planned Community (PC) or Specific Area Plan.

e. Operation on parcels zoned for nonresidential use that may be adjacent to or surrounded by a district otherwise zoned for residential use (including but not limited to parcels zoned for public or private institutional uses, park and recreation uses, open space uses, or other similar nonresidential uses).

C. Violations. Any person who uses a gas powered leaf blower in a residential zone, and/or causes or permits cuttings, refuse or debris swept or blown by any leaf blower to be left in places contrary to the provisions of subsection (B) of this section, is guilty of an infraction.

6.04.050 Disposal on Public Property Prohibited.

No person who is in possession or otherwise controls solid waste or divertible material, shall throw, deposit or leave any solid waste or divertible material, or permit the same to be thrown, deposited or left, in or upon any street, public beach or other public place, or on the shore, or in the waters of Newport Bay.

6.04.060 Collection of Solid Waste.

A. All solid waste placed in the vicinity of any curb or alley for collection purposes shall become the property of the City, a sanitary district, or a private collector licensed or contracted by the City.

B. No person, except an individual acting within the course and scope of their agency or employment with the City, a sanitary district, or a private collector licensed or contracted by the City, shall remove from any place or premises in the City, or transport over public streets, any solid waste.

C. No person shall enter onto private property for the purpose of collecting or inspecting solid waste or divertible material except the owner, occupant, manager, person in control of the premises, or a person employed to do so by the City, a sanitary district, or private collector licensed or contracted by the City to perform this service who is then acting within the course and scope of their agency or employment.

D. No person shall knowingly aid and abet another person in committing a violation of subsection (A), (B), or (C) of this section. A person is guilty of aiding and abetting another person in committing a violation of subsection (A), (B), or (C) of this section if the person knows of the other person's unlawful purpose and the person specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of a violation of subsection (A), (B), or (C) of this section.

E. The provisions of this section shall not prohibit:

1. Any person, with the permission and consent of the property owner, from gathering and removing solid waste, construction and demolition debris, green waste and/or wood waste generated by construction, landscaping or gardening on the property when the solid waste and/or divertible material have not been set out for collection by the City, a sanitary district, or a private collector licensed or contracted by the City, provided that such activities are in compliance with all provisions of this Code including, but not limited to, the provisions of Chapter 6.06;
2. Any person from removing solid waste generated on property owned or controlled by that person;
3. The immediate removal by any person of solid waste, food scraps, and other divertible material which the Health Officer, Code Enforcement Supervisor, City Manager or his/her designee, Fire Chief, Building Official or their agents have determined to constitute a nuisance or an immediate threat to the public health, safety and welfare;
4. Any entity, person or organization from collecting recyclables that have been donated or sold to such entity by the person owning or controlling the premises where the recyclables were generated, in any manner which does not conflict with this chapter or any other provision of this Code; or
5. Any person engaged in the business of destruction of secret, confidential or sensitive documents from collecting, shredding, destroying, recycling and/or disposing of those documents, provided the transport of the documents is incidental to the document destruction or disposal service.

6.04.070 Containers.

- A. Except as provided in subsection (B) of this section, every owner and tenant of any dwelling unit or units, or any place of business or institution within the City where solid waste and/or divertible material accumulate, shall have a sufficient number of containers to accommodate all solid waste and divertible material accumulated on the premises between collection days.
- B. The owner and tenant are each responsible for having the required number of containers; provided, however, the occupant of any dwelling unit for which a short-term lodging permit has been issued by the City shall not be responsible for compliance with this section.

6.04.080 Solid Waste and Divertible Material Container and Bulky Item Requirements.

- A. Container requirements for solid waste and divertible material vary throughout the City depending upon location and the solid waste and divertible material collector servicing the area. If a container is collected by automated equipment, the container shall not exceed the weight limit provided on the container, including contents. If a container is collected without automated equipment, the container shall not exceed fifty (50) pounds in weight, including contents. All solid waste and divertible material set out for collection shall satisfy one or more of the following requirements:

1. Solid waste or divertible material shall be placed in a container provided by, or allowed by, the City, a sanitary district or a permitted contractor, for use in the specific area the container is provided or used;

2. If allowed by the solid waste or divertible material collector servicing an area, persons may use sturdy, grease-resistant, waterproof nonreturnable bags which are specifically designed for solid waste provided that each filled bag, including contents, is no greater than fifty (50) pounds, the opening is secured, and the weight does not cause the bag to tear when handled;

3. If allowed by the solid waste or divertible waste collector servicing an area, solid waste may be placed within a cardboard box and other similar disposable container (collectively, "box") weighing fifty (50) pounds or less, including contents;

4. If allowed by the solid waste or divertible material collector servicing an area, a business owner or operator may place solid waste and/or divertible material in separate thirty-five (35) gallon containers; or

5. Bulky item collection (e.g., an item that does not fit within an approved container, box or bag) varies according to the agreement the City, a sanitary district, or a private community has with a private collector licensed or contracted by the City. Bulky items shall be placed in accordance with the bulky item collection rules and regulations specific to the various areas of the City, which shall be posted on the City's website.

B. No person shall place any solid waste, divertible material or bulky item on public property for collection unless the solid waste and/or divertible material are in a container, box, or bag that fully complies with subsection (A) of this section.

6.04.090 Commercial and Multi-Family Bin and Wheeled Cart Requirements.

Any person who owns, leases, controls, or has charge of any business or multi-family dwelling, which utilizes commercial solid waste bins or wheeled carts for the storage of solid waste, recyclables, green waste, wood waste, food scraps and/or construction and demolition debris shall ensure:

A. The bin and/or wheeled cart is equipped with a lid or cover sufficient to prevent:

1. Odor from escaping the container;
2. Flies and other insects from coming into contact with the contents of the container;
3. The contents from leaving the interior of the container; and
4. Rain or water from entering the interior of the container.

B. The solid waste, green waste, wood waste and food scraps accumulated in the bins and wheeled carts are picked up a minimum of one time per week and recyclable material are picked up at least one time per month.

- C. Each bin and cart is maintained in a clean and sanitary manner.
- D. The lids to the bin or wheeled carts are closed at all times except when solid waste or divertible material is being deposited, the storage area is clean and free of trash and debris, and all oil, grease, fluid and other items are contained within the bin or wheeled cart storage area.
- E. The storage area is cleaned or power washed, as needed, to keep the area free of grease, oils, fluids, stains or odors.

6.04.100 Prohibited Material.

A. No person shall set out for collection any solid waste or divertible material which contains any of the following:

1. Ammunition or explosives;
2. Industrial wastes, or caustic or hazardous chemicals or acids;
3. Pathological, toxic and radioactive waste;
4. Drugs or medicines;
5. Human feces, unwrapped animal feces or dead animals;
6. Liquids, paints or any substance the disposal of which is regulated by the Hazardous Substances Act, or regulations adopted pursuant thereto;
7. Any material, the disposal of which is prohibited within County landfills, including, but not limited to, items longer than four feet in length or items more than eighteen (18) inches in diameter;
8. Lube oils and used oil filters;
9. Items which are too large for, or which may damage, the collection equipment or machinery such as large pieces of metal, machine parts, logs and tree stumps; or
10. Hypodermic needles and lancets.

B. Sod, building scraps, bricks, concrete and other building or construction debris may be refused at the discretion of the collector.

6.04.110 Accumulation Limitation.

No person who owns, leases, controls, occupies or has charge of any premises shall permit solid waste, green waste, wood waste or food scraps to accumulate for a period in excess of one calendar week, or recyclables to accumulate for a period in excess of one calendar month.

No person shall fail, refuse or neglect to place such solid waste and divertible material for collection in accordance with schedules established therefor, the provisions of this chapter, the provisions of Chapter 6.06, and rules and regulations established pursuant thereto.

6.04.120 Storage and Placement of Containers, Boxes, Bags or Bulky Items for Collection.

A. Storage of Containers, Boxes, Bags or Bulky Items. Containers, boxes, bags or bulky items shall be stored in a garage, carport, trash enclosure, or in the sideyard, and beyond a line drawn parallel to the alley from the corner of the building closest to the alley to the adjacent property line except when the containers, boxes, bags or bulky items are placed out for collection.

B. Placement for Collection.

1. Containers, boxes, bags or bulky items shall be placed for collection in a location easily accessible to the solid waste and divertible material collector such as the streetside of the adjacent sidewalk, in the parkway, or in driveways and adjacent to the curb line. Containers, boxes, bags or bulky items shall be placed in the street in a manner that does not impede traffic.

2. If solid waste is collected from an alley abutting the premises, containers, boxes, bags or bulky items shall be placed for collection as close to the alley property line as feasible and on private property. In any alley where a yellow line has been painted by City to demarcate private from public property, containers, boxes, bags or bulky items shall be placed adjacent to the yellow line on the private property side. Containers, boxes, bags or bulky items shall not be placed more than eight feet onto private property as measured from the alley property line or placed in a manner which could obstruct vehicular travel through the alley.

3. Unless an exception applies or other arrangements have been made with the solid waste and divertible material collector serving an area, containers, boxes, bags or bulky items shall not be considered placed for collection and solid waste and divertible material will not be collected unless the containers, boxes, bags or bulky items are removed from any enclosure, structure, cabinet, cart or shelf.

4. Containers, boxes, bags or bulky items shall be placed for collection at residences before 7:00 a.m. on collection days and at businesses before 5:00 a.m. Containers, boxes, bags or bulky items shall not be placed for collection at residences or businesses earlier than 7:00 p.m. the day preceding the collection day, and containers, boxes or bags shall be relocated to their required storage place as soon as possible after collection, but no later than 7:00 p.m. of the day of collection.

C. The owner and tenant shall be responsible for the placement of containers, boxes, bags or bulky items; provided, however, the occupant of any dwelling unit for which a short-term lodging permit has been issued by the City shall not be responsible for compliance with this section.

6.04.130 Administration of Collection Service.

The City Manager or designated representatives shall administer the provisions of this chapter. In carrying out this responsibility, he or she shall have the following powers and duties:

A. Establish the routes, hours and days of collection and he or she may change the same as he or she deems necessary, and shall give notice of such routes, hours, days and changes as seems advisable.

B. Establish rules and regulations consistent with this chapter governing storage, collection and disposal of solid waste and collection and diversion of recyclables, green waste, wood, food scraps and other material including the determination of standards and specifications for approved containers, boxes or bags and the placement of containers, boxes or bags. The rules may permit special containers or bins when the quantity or the nature of the material to be collected so requires.

C. Establish additional rules and regulations consistent with this chapter as may be necessary, reasonable and proper to effect the sanitary, expedient, economical and efficient collection, removal and disposal of solid waste and diversion of recyclables, green waste, wood, food scraps and other materials.

6.04.140 Costs Defrayed From Ad Valorem Tax Revenue.

The cost and expense of collecting, hauling away and disposing of garbage, refuse and cuttings, as those terms are defined by Sections 6.04.010, 6.04.020 and 6.04.030 for any dwelling or dwelling unit, existing or future, within the boundaries of the City as of November 1, 1996, that receives curbside container refuse collection service from the City, shall be defrayed exclusively from the ad valorem tax revenues of the City.

[Note: The definition of "garbage, refuse and cuttings" referred to in Ordinance 96-46 adopted by the voters, is now set forth in Section 6.04.020.]

6.04.150 Removal of Construction and Demolition Debris.

All owners, contractors and builders of structures shall, at their sole cost and expense, comply with all requirements of Section 15.11.010 of this Code to divert construction and demolition debris from disposal. All construction and demolition debris shall be removed from the lot and all nearby premises utilized in such construction within ten (10) calendar days of demolition and said lot and premises shall be left in a sightly condition.

6.04.160 Public Solid Waste and Public Recyclable Material Containers.

The City Manager or designated representative shall procure, place and maintain at suitable places on certain business sidewalks, the public beaches, piers and bay and ocean front street ends a sufficient number of public solid waste and public recyclable material containers to receive and hold solid waste and divertible material generated by the general public at those locations. The Public Works Director shall at all times keep public solid waste and public recyclable material containers in a clean and sightly condition and in good order and repair; provided, that the failure of the Public Works Director to furnish and provide such containers shall not be held or construed to relieve any person from the penalties of this Code.

6.04.170 Prohibition of Commercial Use of Public Solid Waste or Public Recyclable Material Containers.

No person who owns, leases, operates, manages or is employed by a business, as that term is defined in Section 5.04.010, shall deposit, or cause to be deposited, any solid waste or divertible material generated by the business into any public solid waste or divertible material container unless otherwise authorized by resolution of the City Council of the City of Newport Beach.

6.04.180 Prohibition on Private Use of Public Solid Waste or Public Recyclable Material Containers on Balboa Island.

No person who resides, leases, rents or occupies property located on Balboa Island, and no person who owns, leases, rents, operates, manages or is employed by any business located on Balboa Island, shall deposit, or cause to be deposited, any solid waste or divertible material into any public solid waste or public recyclable material container located on Balboa Island.

6.04.190 Tampering with Public Solid Waste or Public Recyclable Material Containers.

No person shall remove, without lawful authority, any public solid waste or public recyclable material container from the place where it is placed and maintained by the Public Works Director, or willfully deface, injure, damage or destroy, or use any public solid waste container or public recyclable material container for any purpose other than the authorized placing of solid waste or divertible material therein by the general public.

6.04.200 Prohibited Disposal.

A. On Another's Property. No person who is in possession or otherwise controls solid waste or divertible material, shall throw, deposit or leave any solid waste or divertible material, or permit the same to be thrown, deposited or left, in or upon the property or premises of another person without the knowledge and prior permission of the owner thereof.

B. On Own Property. No owner of real property shall throw, deposit or leave, or knowingly permit another to throw, deposit or leave, solid waste or divertible material on such real property, nor shall he or she fail, neglect or refuse to wholly remove solid waste or divertible material from such real property, within three (3) days after receipt of written notice by this Code Enforcement Supervisor, Public Works Director or their designee to do so.

C. By Tenants. No owner of real property located in the City shall knowingly permit tenants while in occupation of such real property to throw, deposit or leave any solid waste or divertible material upon the property or premises of another.

6.04.210 Persons Required to Clean Sidewalks.

The occupant, tenant, owner, lessee, or proprietor of any real estate in this City in front of which there is a paved sidewalk shall cause said sidewalk to be swept or otherwise cleaned as frequently as necessary to maintain said sidewalks reasonably free of leaves, dirt, paper, litter or rubbish of any kind. Sweepings from said sidewalk shall not be swept, or otherwise made or allowed to go into the street or gutter, but shall be disposed of by being placed in a solid waste or divertible material container by the person responsible for the cleanliness of said sidewalk.

6.04.220 Burying of Solid Waste or Recyclable Material Prohibited.

No person shall dispose of, or attempt to dispose of, any solid waste or recyclable material by burying it in or underneath the surface of the earth in the City of Newport Beach.

6.04.230 Violation, Penalties and Enforcement.

A. It shall be unlawful for any person to violate any provisions or to fail to comply with any of the requirements of this chapter.

B. Any person violating any of the provisions or failing to comply with any of the requirements of Section 6.04.050 shall be guilty of a misdemeanor pursuant to the provisions of Section 1.04.010(C); however, the violation may be prosecuted as an infraction pursuant to the provisions of Section 1.04.010(A).

C. Except for Section 6.04.050, any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall be guilty of an infraction pursuant to the provisions of Section 1.04.010(A).

D. In addition to, or separate from, the foregoing criminal penalties, any person violating any of the provisions or failing to comply with any of the requirements of this chapter is subject to the issuance of an administrative citation pursuant to the provisions of Section 1.04.010(E) and Chapter 1.05.

Section 5: The Table of Contents for Title 6 of the Newport Beach Municipal Code is hereby amended as follows:

**Title 6
HEALTH AND SANITATION**

Chapters:

- 6.04 Garbage, Refuse and Cuttings
- 6.05 Use of Expanded Polystyrene Disposable Food Service Ware
- 6.06 State Mandated Municipal Solid Waste Diversion Programs
- 6.08 Food Handling Services
- 6.25 Regulation of Smoking in Public Areas and Work Places

Section 6: Chapter 6.06 titled "State Mandated Municipal Solid Waste Diversion Programs" is hereby added to Title 6 of the Newport beach Municipal Code to read as follows:

Chapter 6.06

STATE MANDATED MUNICIPAL SOLID WASTE DIVERSION PROGRAMS

Sections:

- 6.06.005 Purpose and Intent.
- 6.06.010 Definitions.
- 6.06.020 Diversion of Recyclable Materials.
- 6.06.030 Diversion of Food Scraps.
- 6.06.040 Diversion of Green Waste and Wood Waste.
- 6.06.050 Use of Green Waste and/or Wood Waste as Alternative Daily Cover Prohibited.
- 6.06.060 Green Waste and Wood Waste Diversion Required in Landscaping and Gardening Contracts.
- 6.06.070 Full Participation in Diversion Programs Required.
- 6.06.080 Reporting, Inspections, and Compliance Verification.
- 6.06.090 Tenant Participation in Diversion Programs.
- 6.06.100 Diversion Programs Required at Special Events.
- 6.06.110 Waivers.

6.06.120 Enforcement.

6.06.130 Disclaimer of Liability.

6.06.005 Purpose and Intent.

The City Council finds and declares that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by providing minimum standards for the safe and sanitary collection, storage, and transportation of solid waste, food scraps, green waste, wood and recyclable materials generated within the City and the diversion of food scraps, green waste, wood and recyclable materials from the landfill.

6.06.010 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in Chapter 6.04 shall have the same meanings herein unless expressly defined in this chapter. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

“Alternative daily cover” or “ADC” means cover material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, flies, fires, odors, blowing litter and scavenging.

“AB 341 dirty materials recovery facility” or “AB 341 dirty MRF” means a facility, or that certain portion of a facility, that processes municipal solid waste to separate recyclable materials for sale to end users.

“AB 341 Generator” means all municipal solid waste generators required by AB 341 (Public Resources Code Section 41780.01) to divert recyclable materials generated on-site from disposal, including: (A) all businesses located and operating within the City, and the responsible party, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of municipal solid waste per week; including but not limited to, retail stores, restaurants, offices, supermarkets, convenience stores, malls, strip malls, service businesses, hospitals, assisted living facilities, and federal, state and local government facilities; (B) multi-family dwellings consisting of five (5) units or more regardless of the amount of municipal solid waste generated; (C) the City, its facilities, and its non-residential properties; and (D) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City.

“AB 1826 Generator” means: (A) all food-generating businesses within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of municipal solid waste per week and are required by AB 1826, as codified in Public Resources Code Section 42649.82, to divert all food scraps generated on site from disposal; including but not limited to, all restaurants, cafeterias, hospitals, and supermarkets; (B) all non-food-generating businesses, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of solid waste per week and that generate green waste and/or wood; (C) all multi-family dwellings consisting of five (5) units or more, regardless of the amount of municipal solid waste generated; (D) the City, its facilities, and non-residential properties; and (E) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City. As of the effective date of this ordinance, the threshold amount of municipal solid waste provided for in Public Resources Code Section 42649.81 is four (4) or more cubic yards of municipal solid waste which may be reduced by CalRecycle to two (2) cubic yards of municipal solid waste per week on or after January 1, 2020. If CalRecycle changes the quantities of solid waste necessary to be considered an AB 1826 generator, the definition of an AB 1826 generator shall be automatically amended to reflect these new quantities.

“AB 1826 green waste and/or wood waste dirty materials recovery facility” or “AB 1826 dirty MRF” means a facility, or that certain portion of a facility, that processes municipal solid waste to separate green waste, and/or wood waste.

“CalRecycle” means the California Department of Resources Recycling and Recovery or any successor agencies.

“Compost appliance” means an enclosed on-site device that utilizes aerobic microbial digestion of food scraps.

“Contamination” means materials not designated to be placed in a particular container or, with regard to processing, at a permitted processing facility that would interfere with such processing and/or reduce the quality and value of divertible material. Examples include recyclable materials placed in a green waste container or food scraps placed in a recyclable materials container and includes municipal solid waste placed in any container designated for divertible materials and any divertible materials placed in a container designated for municipal solid waste.

“Construction and demolition debris” means all inert material of every nature description or kind, which has resulted from the building or demolition of a structure, pavements, sidewalks, curbs, gutters and other concrete structures, including all lumber scraps, shingles plaster, sheetrock, packaging, rubble, brick, stone, concrete, asphalt, dirt, rock and other building materials.

“Container” means any object designed and used to hold or store municipal solid waste, recyclable materials, food scraps, green waste, or construction and demolition debris. Container includes, but is not limited to, carts, bins open top roll off boxes, and compactors.

“Director” means the Director of the Public Works Department or his or her designee.

“Diversion” or “divert” means any combination of recycling, sorting, composting and other processing activities conducted at a clean materials recovery facility, a mixed waste processing facility (dirty MRF), a compost facility, an anaerobic digestion facility, a bioengineered feedstock facility, and/or at a construction and demolition debris processing facility to use or market the materials for re-use, remanufacture, reconstitution or otherwise return the materials to the economic marketplace and to prevent the materials from being disposed of in a landfill.

“Divertible materials” or “divertible” means recyclable materials, food scraps, green waste, and/or construction and demolition debris, electronic waste, universal waste, and all other materials that may be diverted from landfill disposal and includes, but is not limited to, all materials required to be diverted from landfill disposal by the City, CalRecycle or any state or federal agency.

“Edible food for human consumption” or “edible food” means food that has been prepared but not served, and includes but is not limited to: any appetizer, soup, salad, entree, dessert, raw fruit and vegetable, that may or may not have been sliced, grated, cooked, baked or otherwise prepared for consumption but not served; any packaged sandwich, salad, fruit and fruit salad; and other non-served food that meets state and local requirements as being edible for human consumption.

“Food scraps” means discarded material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from municipal solid waste and includes surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables, culls, and plate scrapings. For purposes of this chapter, “food scraps” does not include edible food for human consumption that is donated or sold.

“Food soiled paper” means paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, waxed paper, butcher paper, paper take-out boxes and containers, greasy pizza boxes, paper bags, cardboard and wax-coated cardboard produce boxes that are contaminated with food scraps. For purposes of this chapter “food soiled paper” does not include aluminum foil, foil-lined wrap, plastic wrap, polystyrene, expanded polystyrene or diapers.

“Generator” means both an AB 341 generator and AB 1826 generator.

“Multi-family dwelling” means a building, dwelling unit or complex containing multiple dwelling units that house five (5) residences or more and that utilize centralized municipal solid waste collection service from bins, wheeled carts, compactors and/or roll off boxes located in enclosures or other designated areas and includes any apartment complex, condominium, townhouse, gated development, homeowner’s association, mobile home park and similarly configured housing complexes that utilize centralized service. For purposes of this chapter “multi-family dwelling” does not include single-family residences, duplexes, triplexes, fourplexes or any residences that have individual wheeled cart municipal solid waste collection service at each unit or residence.

“Municipal solid waste” or “MSW means putrescible and non-putrescible solid and semi-solid wastes generated in or upon, related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, and other solid and semi-solid wastes. For purposes of this chapter, “municipal solid waste” does not include recyclable materials, food scraps, green waste, wood waste or construction and demolition debris that have been separated and segregated from municipal solid waste for diversion and/or liquid waste, abandoned vehicles, auto parts, hazardous, biohazardous and biomedical waste.

“Permitted processing facility” means a processing facility for diverted materials that holds all required federal, state, and local permits and is operating in accordance with all permit requirements including, but not be limited to, materials recovery facilities (clean MRF’s), mixed waste processing materials recovery facilities (dirty MRF’s), composting facilities, anaerobic digestion facilities, publicly owned treatment works that accept food scraps and/or bioengineered feedstock for digestion, and processing facilities for construction and demolition debris.

“Recyclable materials” shall have the same definition as set forth in Section 6.04.020 of this Code.

“Responsible party” means property owners, business owners, property managers, property management firms and business managers as well as the person(s) that subscribes to and pays for municipal solid waste and/or divertible materials collection service for a premises or business located within the City, or that otherwise arranges for removal of municipal solid waste and/or divertible material from the business premises and that has the legal authority to compel generators to comply with the requirements of this chapter.

“Self-haul” means the transport of municipal solid waste and/or divertible materials by the person who generated the municipal solid waste and/or divertible materials, or by the owner or manager of a premises at which the materials and/or municipal solid waste were generated and whose primary business is not the collection and transport of municipal solid waste or divertible materials. Self-haul includes backhauling of divertible materials generated on the self-hauler’s premises using the generator’s own employees and equipment. For example, a supermarket backhauls spoiled fruits and vegetables to its central distribution facility for consolidation and transport to a composting facility.

“Special event” means a temporary gathering for a specific event or purpose such as concerts, fairs, festivals, swap meets, athletic events, boat shows, fireworks displays, and outdoor weddings, which requires a Level 2 or Level 3 City permit pursuant to Chapter 11.03 of this Code.

“Wood waste” or “wood” means all non-hazardous wood material that is not painted with lead-based or other paints containing materials identified as hazardous, or treated with creosote or other hazardous materials and includes, but is not limited to, tree branches and other wood trimmings, dimensional lumber and other pieces of wood generated during the manufacture or processing of wood products, and the wood debris from construction and demolition activities.

6.06.020 Diversion of Recyclable Materials.

A. An AB 341 generator shall divert all recyclable materials generated at their premises by one or more of the following methods, and shall fully participate in the method(s) selected:

1. Separate all recyclable materials from other municipal solid waste and subscribe to a recyclable materials collection service a minimum of once a week from a City-authorized franchisee and fully participate in the diversion program provided by the franchisee;
2. Separate recyclable materials from other municipal solid waste, and
 - a. Self-haul the recyclable materials to a permitted recycling center or a permitted processing facility for diversion, or
 - b. Donate or sell the recyclable materials to a recycling business that collects and/or accepts the materials for recycling as described in Section 12.63.150(B) of this Code; and/or
3. Subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 341 dirty MRF to separate recyclable materials from other municipal solid waste that yields diversion results comparable to source separation.

B. For purposes of this section, to be considered as fully participating while utilizing a City-authorized franchisee, an AB 341 generator shall comply with all requirements in Section 6.06.070 or subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 341 dirty MRF to separate recyclable materials from other municipal solid waste that yields diversion results comparable to source separation.

6.06.030 Diversion of Food Scraps.

A. An AB 1826 generator, other than a multi-family dwelling, shall divert all food scraps and food soiled paper generated at their premises by one or more of the following methods and shall fully participate in the method(s) selected:

1. Source separate all food scraps and food soiled paper from other municipal solid waste and subscribe to a source separated collection service a minimum of once a week from a City-authorized franchisee;
2. Separate food scraps from other municipal solid waste and donate or sell the food scraps for use as animal feed;
3. Separate food scraps and food soiled paper from other municipal solid waste and compost the food scraps and food soiled paper onsite using a compost appliance, backyard compost unit, compost pile, or in a community garden in compliance with all other applicable provisions of this Code;
4. Self-haul the food scraps and food soiled paper to a permitted processing facility for diversion; and/or

5. Donate or sell the food scraps to a for-profit or non-profit business that utilizes food scraps as an input for food and beverage manufacturing processes. For example, spent grain from beer brewing process used to make cereal bars or stale bread donated for use in a beer brewing process.

B. To be considered fully participating in any of the above-listed methods (1) through (5), AB 341 generators shall comply with all requirements in Section 6.06.070.

6.06.040 Diversion of Green Waste and Wood Waste.

A. An AB 1826 generator shall divert all green waste and wood waste generated at their premises by one or more of the following methods and shall fully participate in the method(s) selected:

1. Separate all green waste and wood waste from other municipal solid waste and subscribe to a green waste and/or wood waste collection service a minimum of once a week from a City-authorized franchisee;
2. Separate green waste and/or wood waste from other municipal solid waste and compost the green waste and/or wood waste onsite in a backyard compost unit, compost pile, or community garden in compliance with all other applicable provisions of this Code;
3. Self-haul the green waste and/or wood waste to a permitted processing facility for diversion;
4. Subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 1826 dirty MRF that is compliant with all CalRecycle standards and requirements for a "high diversion organic waste processing facility" to separate green waste and/or wood waste from other municipal solid waste; and/or
5. Contract with a gardening or landscaping service and include in the contract the provisions of Section 6.06.060.

B. To be considered fully participating while using methods (A)(1), (2), and/or (3), referenced above, AB 1826 generators of green waste and/or wood waste shall comply with all requirements in Section 6.06.070. AB 1826 generators of green waste and/or wood waste using only methods (4) and/or (5) are not required to comply with the requirements in Section 6.06.070. AB 1826 generators of green waste and/or wood waste using method (5) shall only be considered as fully participating if they have a written contract with a gardening or landscaping service, the written contract contains the provisions listed in Section 6.06.060, and the gardening or landscaping service is fully complying with the terms of the contract.

C. All owners, contractors and builders of construction projects and demolition projects in the City shall comply with the requirements of Section 15.11.010 of this Code for diversion of wood waste and all other construction and demolition waste generated by such projects. For such projects, the requirements of Section 15.11.010 shall take precedence over the requirements of this Section 6.06.040.

6.06.050 Use of Green Waste and/or Wood Waste as Alternative Daily Cover Prohibited.

A. Any person collecting green waste or wood waste in City shall compost the green waste and/or wood waste on site or deliver the green waste and/or wood waste to a permitted green waste and/or wood waste processing facility for diversion.

B. No generator of green waste and/or wood waste shall permit any green waste or wood waste collected in City to be used as alternative daily cover at a landfill as an end use including, but not limited to, green waste and wood waste processed at a permitted processing facility.

6.06.060 Green Waste and Wood Waste Diversion Required in Landscaping and Gardening Contracts.

An AB 1826 generator contracting for gardening or landscaping services shall require written contracts which contain the following provisions:

A. All green waste and wood waste generated at the premises by the landscaping or gardening service shall be diverted from disposal by one or more of the methods in Section 6.06.040.

B. A prohibition on the use of green waste or wood waste, or processed green or wood waste as alternative daily cover at a landfill.

C. A requirement that the landscaper or gardener certify that the requirements set forth in subsection (A) and (B), are being met and that all green waste and wood waste handled by the landscaper or gardener is not being used as alternative daily cover.

D. A requirement that the landscaper or gardener annually, on or before July 1, certify that it is compliant with this section by completing and submitting a City-provided reporting form.

E. A requirement that the landscaper or gardener provide copies of weight tickets from the permitted processing facility(ies) where the green waste and/or wood waste from premises within City were delivered by the landscaper or gardener, as required by Section 6.06.080(C) and (E).

6.06.070 Full Participation in Diversion Programs Required.

A generator shall fully participate in the diversion program(s) the generator selects for their premises such that all the following requirements are met:

A. The generator shall provide appropriately sized and labeled containers for divertible materials wherever municipal solid waste containers are provided for use by employees, customers and tenants, excluding restrooms and:

1. An AB 341 generator shall provide containers for recyclable materials;
2. An AB 1826 generator, other than a multi-family dwelling, shall provide containers for food scraps, green waste and wood; and
3. An AB 1826 multi-family dwelling shall provide containers for green waste and wood but shall not be required to provide containers for, or to divert, food scraps.

B. The generator shall prohibit the generator's employees and tenants from placing divertible materials in a container not designated to receive said material.

C. The generator shall periodically inspect municipal solid waste containers and divertible materials containers for contamination and inform employees and tenants if containers are contaminated and of the requirement to only use the specified container for each type of divertible material.

D. The generator shall ensure the generator's municipal solid waste carts and bins do not contain AB 341 or AB 1826 divertible materials (except multi-family dwellings' municipal solid waste containers may contain food scraps).

E. The generator shall ensure the generator's divertible materials carts and bins contain no municipal solid waste.

F. The generator shall use appropriately sized lidded, wheeled cart(s) and/or lidded bin(s) provided by a franchisee for storage of all divertible materials or, if other types of containers are used, the generator shall ensure the containers are in compliance with this Code.

G. The generator shall place out for collection AB 341 and AB 1826 divertible materials at the designated collection location on the designated day and at the designated time.

H. The generator shall subscribe to adequate levels of service such that AB 341 and AB 1826 divertible materials are collected a minimum of one time per week or more frequently if required to prevent overflow of the carts and/or bins and to prevent placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.

I. If a generator is self-hauling divertible materials to a permitted processing facility or donation location the generator shall ensure that:

1. Food scraps and green waste are self-hauled a minimum of once a week or more frequently if required to prevent: a. overflow of the carts and/or other containers, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the

municipal solid waste containers or in containers designated for other divertible materials; and

2. Other divertible materials are self-hauled a minimum of once a month or more frequently if required to prevent: a. overflow of the carts and/or bins, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.

J. If a generator is donating or selling divertible materials to a third party that collects the divertible materials, the generator shall ensure that:

1. Donated food scraps and green waste are collected a minimum of once a week and more frequently if required to prevent: a. overflow of the carts and/or other containers, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials; and

2. Other donated divertible materials are collected a minimum of once a month or more frequently if required to prevent: a. overflow of the carts and/or other containers, b. odors, vectors or creation of a nuisance, and/or c. placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.

6.06.080 Reporting, Inspections, and Compliance Verification.

Generators that donate, sell, or self-haul AB 341 and/or AB 1826 divertible materials shall comply with the following requirements:

A. Annually, on or before July 1, generator shall submit to the City, a fully completed City-provided compliance reporting form either in hard copy or electronically.

B. Within thirty (30) calendar days of a request by the City, the generator shall obtain and provide copies of weight tickets or receipts from the recycling center(s) and/or permitted processing facility(ies) where the divertible materials were delivered by the generator or by a third party to whom divertible materials were donated or sold.

C. On or before July 1 of each year, AB 1826 generators that contract with a landscaping or gardening service shall complete and submit a compliance reporting form as provided by the City with the following items attached:

1. Copies of the generator's contract(s) with the landscaping or gardening service(s) that comply with Section 6.06.060.

2. Copies of landscaper and gardener certification(s) that green waste and wood waste were not used as alternative daily cover during the preceding twelve (12) months.

D. Within thirty (30) calendar days of a request by the City, the generator shall provide the City with any relevant information necessary to verify the end use of recyclable materials, green

waste, wood waste and food scraps to ensure the materials were diverted from landfill and/or were processed at permitted facilities and diverted from landfill.

E. Upon request by the City, an AB 1826 generator contracting for gardening or landscaping services shall provide copies of the contracts, certifications, receipts and/or weight tickets from the permitted processing facility(ies) to the City within thirty (30) calendar days of service of the request in accordance with Section 1.08.080.

F. During regular business hours, generators shall allow the City access to properties to check containers for contamination and to verify compliance with the requirements of Section 6.06.070.

G. Generators shall not submit any report to the City that contains false or misleading information.

6.06.090 Tenant Participation in Diversion Programs.

A property owner of a multi-family residential dwelling, mall, strip mall or other commercial building shall require tenants and lessees to separate the divertible materials generated in the unit or space they occupy from municipal solid waste and place the divertible materials in designated containers described in Sections 6.06.070(A) and 6.06.070(F) for each type of material to aid in compliance with this chapter.

6.06.100 Diversion Programs Required at Special Events.

A. The promoter, coordinator or responsible party for a Level 2 or 3 special event pursuant to Chapter 11.03 of this Code shall provide sufficient containers to handle all municipal solid waste, recyclable material and food scraps from the event and shall ensure the proper storage, collection and diversion of recyclable materials and food scraps.

B. The responsible party shall, as part of the application for a Level 2 or 3 special event permit, submit an implementation plan for the handling and diversion of recyclable materials and food scraps generated at the event that meets the requirements of this section and submit a deposit of \$250 for a Level 2 event or a deposit of \$500 for a Level 3 event with the application.

C. The promoter, coordinator or responsible party shall provide three (3) types of containers at appropriate locations at the special event to facilitate the source separation of municipal solid waste, recyclable materials and food scraps by event employees, vendors and attendees. The three (3) types of containers shall:

1. Be appropriate in number and size with respect to the quantity of municipal solid waste, recyclable materials, and food scraps anticipated to be generated at the special event;

2. Bear appropriate signage to identify the type of materials to be contained and meet any additional design criteria established by the City; and

3. Be placed together as municipal solid waste, recyclable materials and food scrap stations throughout the special event venue to provide equally convenient access to users for disposal of municipal solid waste and diversion of recyclable materials and food scraps.

D. If the promoter or coordinator determines that vendor booths at the special event will require municipal solid waste containers, the coordinator, promoter or responsible party shall provide the vendor with a set of the three (3) containers bearing appropriate signage to identify the type of material to be contained in each container.

E. The use of public municipal solid waste containers or public recyclable material or food scraps containers at special events is prohibited. The promoter, coordinator or responsible party shall remove or cover all public municipal solid waste, recycling and food scraps receptacles to prevent their use during the special event.

F. The promoter, coordinator or responsible party shall arrange for collection of all municipal solid waste, recyclable materials and food scraps at frequencies that prevent the overflow of said materials from storage containers at the special event. For special events of more than one day in duration, all municipal solid waste, recyclable materials and food scraps shall be either collected and transported off site at the end of each day, or emptied into interim containers (lidded wheeled carts, lidded bins or covered roll off boxes) at the end of each day as required to prevent odors, vectors and blowing litter.

G. The promoter, coordinator or responsible party shall arrange for collection and transport of all municipal solid waste to a fully permitted landfill or other fully permitted disposal site, and shall arrange for collection and transport of all recyclable materials and food scraps to permitted processing facilities for these materials to be diverted.

H. The promoter, coordinator or responsible party shall obtain weight tickets from the disposal site and all permitted processing facilities showing the date and weight of the materials delivered to the facility from the special event.

I. The promoter, coordinator or responsible party shall submit the following information to the City within thirty (30) calendar days of the end of the special event:

1. Name and date(s) of the special event;
2. Contact information for the responsible party, promoter or coordinator;
3. Address of location where event was held;
4. Number of attendees for each day of the event;
5. Quantity of municipal solid waste collected and disposed;

6. Quantity of recyclable materials collected and diverted;
7. Quantity of food scraps collected and diverted; and
8. Copies of weight tickets from municipal solid waste disposal facility and all permitted processing facilities where recyclable materials and food scraps were delivered.

J. The deposit paid by the promoter, coordinator or responsible party shall be returned upon City verification that the diversion program was carried out in compliance with this Section 6.06.100. The deposit shall be retained by the City in the event the Director determines that the solid waste diversion program was not implemented in compliance with this section.

6.06.110 Waivers.

A. The Director may waive all or some of the requirements of this chapter and exempt a generator from such specified requirements for up to a one (1) year period, per request, based upon a finding that:

1. The premises lacks adequate space for containers for the specified recyclable materials, food scraps, green waste and/or wood and that space physically does not exist and cannot be created for same.
2. The generator's total solid waste collection service is adequate for the quantities generated at the premises, and consists of four (4) cubic yards or more per week of service; and the combination of food scraps, green waste and wood waste taken together, equals less than one-half (1/2) of one (1) cubic yard per week of the businesses' total municipal solid waste.

B. An application for a waiver shall be submitted on a form provided by the Director, with the application fee, and include all information necessary for the Director to make his/her decision, including but not limited to documentation showing the factual support for the requested waiver. The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the waiver application.

C. The City will, upon receipt of the request for a waiver from a generator, conduct a site visit to evaluate the request and assess possible alternative container and service configurations for the premises.

D. The Director may approve, conditionally approve, or deny the waiver application, in whole or in part.

E. The Director's decision shall be final thirty (30) calendar days after notice is provided to the applicant in accordance with Section 1.08.080, unless appealed to the Assistant City Manager within that timeframe. Any appeal shall be submitted to the Assistant City Manager on a form approved by the Assistant City Manager along with the appeal fee. If appealed, the Assistant City Manager shall complete his/her review and issue a written decision upholding, overturning or modifying the decision of the Director within thirty (30) calendar days. The decision of the Assistant City Manager shall be final.

F. A generator granted a waiver by the City is required to reapply prior to the end of the waiver period and demonstrate continued conditions that warrant the granting of another waiver for a period of up to one (1) year.

G. The City Council shall adopt, by resolution, a fee to recover costs associated with processing the waiver application and an appeal fee.

6.06.120 Enforcement.

A. Violations of this chapter shall be enforced in accordance with the provisions of Chapter 1.04 and Chapter 1.05 of this Code.

B. To the extent permitted by law, the Director may inspect any container, collection vehicle load, permitted processing facility and/or disposal site for collected municipal solid waste, recyclable materials, food scraps, green waste, wood waste, construction and demolition debris and other materials generated within the City of Newport Beach.

6.06.130 Disclaimer of Liability.

The degree of protection required by this chapter is considered to be reasonable for regulatory purposes. The standards set forth in this chapter are minimal standards and do not imply that compliance will ensure safe handling of recyclable materials, food scraps, green waste, wood waste or municipal solid waste. This chapter shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this chapter or any administrative decision lawfully made in accordance with this chapter. All persons handling discarded materials within the City should be and are advised to conduct their own inquiry as to the handling of such materials. In undertaking the implementation of this chapter, the City is assuming an undertaking to comply with state law and to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 7: Section 10.28.045(D) of Chapter 10.28 of Title 10 of the Newport Beach Municipal Code is hereby amended to read as follows:

D. Mechanical blowers, as defined in Section 6.04.040, shall not be operated at a noise level that exceeds an A-weighted sound pressure level of sixty-five (65) dBA, as measured from a distance of fifty (50) feet.

Section 8: The Table of Contents for Chapter 11.08 of Title 11 of the Newport Beach Municipal Code titled “Conduct on Beaches and Piers” is hereby amended to read as follows:

**Chapter 11.08
CONDUCT ON BEACHES AND PIERS***

Sections:

- 11.08.010 Obstructions on Public Beaches Prohibited.
- 11.08.020 Use of Shade Coverings.
- 11.08.030 Use of Beaches at Night.
- 11.08.040 Sleeping in Vehicles or on Beaches and Piers.
- 11.08.050 Disposal of Noncombustible Refuse.
- 11.08.055 Dangerous Articles—Glass Containers on Beach.
- 11.08.060 Use of Beach Fire Rings.
- 11.08.070 Removal of Beach Sand.
- 11.08.090 Vehicle Restrictions on Public Piers and Plazas.

* Removal of refuse required—See Section 6.04.050.

Section 9: The Table of Contents for Title 14 of the Newport Beach Municipal Code titled “Water and Sewers” is hereby amended to read as follows:

**Title 14
WATER AND SEWERS***

Chapters:

- 14.04 Utilities Department—General Regulations
- 14.08 Water Connections
- 14.10 Cross-Connection Control Program
- 14.12 Water Rates and Charges
- 14.13 Recycled Water Rates

14.16 Water Conservation and Supply Level Regulations

14.17 Water-Efficient Landscaping

14.20 Water Meters

14.24 Sewer Connection, Permits

14.28 Industrial Wastes

14.30 Fats, Oils and Grease (FOG) Control

14.33 Water Capital Improvement Charges

14.34 Water Well Standards

14.36 Water Quality

* Garbage, refuse and cutting regulations - See Chapter 6.04. State Mandated Municipal Solid Waste Diversion Programs - See Chapter 6.06.

Section 10: Section 20.30.120(A) of Chapter 20.30 of Title 20 of the Newport Beach Municipal Code is hereby amended to read as follows:

A. Purpose. This section provides standards for the provision of solid waste (refuse) and recyclable material storage areas in compliance with State law (California Solid Waste Reuse and Recycling Access Act, Public Resources Code Section 42900) and Chapter 6.04 (Garbage Refuse and Cuttings) and Chapter 6.06 (State Mandated Municipal Solid Waste Diversion Programs).

Section 11: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 12: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 13: The action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Sections 15060 (c)(2), 15060 (c)(3), 15061(b)(3) and 15308 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is not a project under CEQA, will not result in a direct or reasonably foreseeable indirect change to the environment and does not have the potential for causing a significant effect on the environment. Additionally, the proposed ordinance is categorically exempt in accordance with Section 15308 which exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The City's enactment of the proposed ordinance in accordance with the state mandates on the diversion of solid waste will protect the environment with the reduction in greenhouse gas emissions.

Section 14: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 15: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, California, held on 10th day of September, 2019, and adopted on the 24th day of September, 2019, by the following vote to-wit:

AYES: _____

NAYS: _____

RECUSED: _____


ABSENT: _____

DIANE B. DIXON, MAYOR

ATTEST:

LEILANI BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY