

September 10, 2019, Council Item 23 Comments

The following comments on an [item](#) on the Newport Beach City Council [agenda](#) are submitted by:
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Item 23. 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

It is good that municipal ordinances require two readings. Even then, I'm not sure great results can be expected when 30 pages of densely written code are posted with minimal explanation on a Thursday and a first reading is scheduled on the following Tuesday – especially when they are part of a 788-page agenda packet (and when the separate copies of the ordinance materials posted to Granicus/Legistar are not searchable – only those in the massive complete packet). Given that constraint, it is not possible for me to read the four bills cited in the preamble and know if the proposed amendments properly implement them, or if there are alternative and possibly better ways to implement them. Apparently the provisions stimulating the need for this are mostly somewhere in the very long [Division 30](#) (“Waste Management”) of the state’s Public Resources Code (“Section 40000 *et. seq.*”).

As a rather disturbing threshold issue, the redline copy (Attachment B) does not seem to correlate with clean copy (Attachment A), so it is hard to know what to trust or comment on.

For example, the second page of redline text (page 23-37) refers, without any suggested correction, to the obsolete position of “Municipal Operations Director” but the clean version being presented for first reading (page 23-6) does not.

Similarly, the redline on page 23-40 shows a proposed Section 6.04.010 (“Purpose and Intent”) with subparts “A” and “B”. The Section 6.04.010 proposed for adoption on page 23-8 is not lettered like that and is missing the part “B.” **That makes it seem likely the redline is more current than the “clean” version.**

But the “clean” version seems to be what is being introduced at first reading, so these are some things that catch my eye in it:

Page 23-5, first Whereas: “*WHEREAS, Assembly Bill 939 (“AB 939”), codified in Public Resources Code Section 40000 ~~et. et~~ seq., in 1989, requires the City of Newport Beach (“City”) to divert a minimum of fifty percent (50%) of the municipal solid waste generated from landfill disposal;*” [since the numbers are “recycled” each session, a bill reference, without year, is meaningless]

Page 23-6, top Whereas: “*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. et~~ seq. and failure to comply can result in fines, penalties and compliance orders assessed against local agencies; and*”

Note: In the July 23, 2019, presentation to the Council about “Organic Waste Recycling” ([Item SS3](#)), Slide 4 mentioned a seemingly important [SB 1383](#) (from 2016, mis-referenced as “AB 1383” on page 8-3 of the present agenda packet). Since it is not referenced in this item, it is unclear if its requirements are being addressed here, or if there are any that need to be. Were its mandates imposed solely on state agencies?

Page 23-6, Section 1: It is unclear why Sections 6.04.050 and 6.04.190 are singled out as the *only* parts of Chapters 6.04 enforceable by persons other than the Public Works Director. And why none of these people can enforce the new Chapter 6.06?

Page 23-6, Section 2: The proposed Section 1.12.020(D) appears to be completely redundant with the existing [Section 1.12.020\(E\)](#). The latter (rightly or wrongly) gives the Public Works Director the authority to issue citations for *any* code violation. The present amended adds a more limited authority he already has.

Page 23-8, Definitions: *“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 shore** and all the shore of the harbor, and any bay or channel in the City.* [This definition has very long history in the code, but it makes little sense. The “ocean” has no direction. How can anything be parallel to it? That said, it’s unclear what the intent is of referencing the southerly boundary line of the nearest parallel public street.]

Note: regarding definitions in general, it would be good to highlight defined terms in some way in the body of the chapter. For example, by printing them in bold, italics or capital letters. Otherwise, readers of the code have no idea what is intended as a special defined word, and which are to be understood with their common meanings. “Beach,” for example, might not really need a definition – at least this one adds little to my understanding of it.

Page 23-8, Definitions: *“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.”*

Page 23-9, Definitions: *“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 1558** adopted March 25, 1974.* [This seems to be an effort to save the voter-enacted [Ordinance No. 96-46](#) which replaced voter-enacted [Ordinance No. 878](#) (1959) in providing for the cost of collections of “Garbage, refuse, and cuttings” to be absorbed in the basic ad valorem property tax – as preserved in the new Sec. 6.04.140 (on page 23-16). However, it is not totally clear if the ordinances cited – [1403](#) and [1558](#) – contain the definitions referenced in 1996. In any case, it would be better to copy over what we think they were rather leaving readers to hunt for them. Moreover, since this appears to have relevance only in Section 6.04.140 it would probably be better to explain it there.]

Page 23-9, Definitions: *“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 semisolid 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.” [This still needs work. Including the words struck out creates a circular definition. If the distinction between “solid waste” and “municipal solid waste” is important, they need to be defined separately, not as being synonymous.]

Page 23-10, Section 6.04.040 (“Leaf Blowers”): It seems ironic that General Plan [Policy NR 7.4](#) (“Use of Blowers”), adopted in 2006, promised “*Consider eliminating the use of leaf blowers by the City, and discourage their use on private property.*” Rather than leading by example, private use is regulated and City operations (including by contractors) are exempted in 6.04.040.B.3.b.

Also, if one of the intents in revising the code was to consolidate definitions, it is unclear why this section has its own – although if a definition is only used in one place I personally prefer it to be there.

It further seems odd that this is not one of the sections (per the revisions to Title 1) for which citations can be issued by anyone other than the Public Works Director and his staff.

Finally, the Council may want to note the restriction in Section 6.04.040.B.3.a on organizations eligible to opt out of the leaf blower ban. It is much more precise than that in the recent Saturday noise/construction signage ordinance.

[the foregoing represents only a tiny fraction of the proposed code, but it is all I could complete by 5:00 p.m. Tuesday deadline for submitting comments]