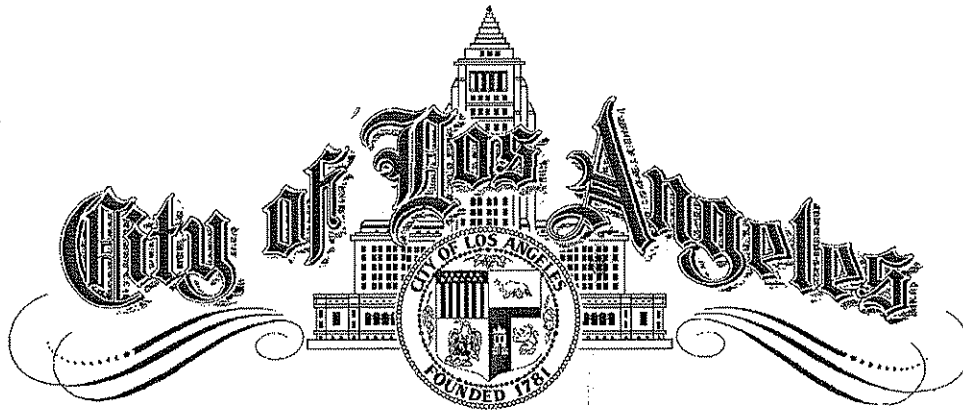


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 0 - 0 4 3 1
DEC 1 0 2010

REPORT RE:

DRAFT ORDINANCE AMENDING CHAPTER VI, ARTICLE 6, SECTIONS 66.32 THROUGH 66.32.5, AND REPEALING SECTIONS 66.32.6 THROUGH 66.32.8, OF THE LOS ANGELES MUNICIPAL CODE TO REQUIRE THAT CONSTRUCTION AND DEMOLITION WASTE GENERATED IN THE CITY OF LOS ANGELES BE TAKEN TO A CITY CERTIFIED CONSTRUCTION AND DEMOLITION WASTE PROCESSING FACILITY

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 09-3029

Honorable Members:

Pursuant to your request, this Office has prepared and transmits for your consideration, approved as to form and legality, a draft ordinance that would establish a program to require that all construction and demolition waste generated within the City be taken for recycling to City-certified construction and demolition waste processing facilities.

Background and Summary of Ordinance Provisions

Your Honorable Body requested that this Office draft an ordinance as described above, and the enclosed draft ordinance incorporates the requested provisions. In addition, the draft ordinance repeals Section 66.32.7, that purported to provide a special class of privacy protection for documents pertaining to the City's regulation of private solid waste haulers and recyclers. This section was repealed to conform to preemptive State law, the California Public Records Act, Government Code Section 6250, *et. seq.*

It should be noted that the draft ordinance allows for construction and demolition waste to be separated at the construction site for recycling or to be transported for separation and recycling at a Certified Construction and Demotion Waste Processing Facility. Based on information provided by the Bureau of Sanitation, the ordinance provides that the diversion goals of the City will total 70% by the year 2013.

CEQA Findings

If you wish to adopt the ordinance, you must first comply with the California Environmental Quality Act (CEQA). The Department of Public Works, Bureau of Sanitation, believes this ordinance is exempt from CEQA because under the proposed ordinance, the City's issuance of recycling permits for construction debris is a ministerial decision involving little or no personal judgment and relying on fixed standards. Ministerial actions are not subject to CEQA. Pub. Res. Code Sec. 21080(b)(1) and State CEQA Guidelines Section 15268. In addition, under State CEQA Guidelines Section 15308, the ordinance is exempt from CEQA because it consists of a regulatory action as authorized by state law and local ordinance to assure the maintenance and protection of the environment and the regulatory process involves procedures for protection of the environment. If the Council concurs, it may comply with CEQA by making this exemption determination prior to or concurrent with its action on the ordinance.


Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Bureau of Sanitation. The Bureau believes that, excepting the repeal of Section 66.32.7, the draft ordinance accurately reflects Council's request.

If you have any questions regarding this matter, please contact Deputy City Attorney Judith E. Reel at (213) 978-2021. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:JER:lee
Transmittal

ORDINANCE NO. _____

An Ordinance amending Chapter VI, Article 6, Sections 66.32 through 66.32.5, and repealing Sections 66.32.6 through 66.32.8, of the Los Angeles Municipal Code to require that construction and demolition waste generated within the City of Los Angeles be taken to a City certified construction and demolition waste processing facility.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 66.32 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 66.32. PURPOSE AND DEFINITIONS.

In order to meet the diversion goals of AB 939 and the City of Los Angeles which will total 70 percent (70%) by the year 2013, solid waste haulers, contractors and recyclers shall register with the City to obtain a permit. Among the various purposes of this program is the goal of maintaining an open and competitive market for all companies providing solid waste and disposal services in the City, and to mandate the recycling of construction and demolition waste. As used in this Section and in Sections 66.32.1 through 66.32.5, the following terms shall have the meanings set forth below:

1. **AB 939** shall mean the State of California's Integrated Waste Management Act of 1989, as may be amended from time to time, and as set forth in California Public Resources Code Sections 40050, *et seq.*, and implementing regulations of the Department of Resources Recycling and Recovery (CalRecycle).

2. **AB 939 Compliance Permit** shall mean a permit issued pursuant to the provisions of Subsection (a) of Section 66.32.1.

3. **Appellant** shall mean a Person who files a written request for a hearing pursuant to the provisions of Subdivision (1) of Subsection (d) of Section 66.32.3.

4. **Board** shall mean the City of Los Angeles Board of Public Works.

5. **Certified Construction and Demolition Waste Processing Facility** shall mean a waste processing facility, possessing valid and current certification from the City of Los Angeles, that accepts loads of Construction and Demolition Waste for the purpose of recovering reusable and recyclable materials and disposing of non-recyclable residual materials.

6. **City** shall mean the City of Los Angeles.

7. **Co-Mingled Recyclables** shall mean material that has been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of

additional sorting or processing the material for recycling or reuse in order to return the material to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Co-Mingled recyclables shall not consist of Construction and Demolition Waste.

8. **Contractor** shall mean any Person who enters into a contract for any construction or demolition project that requires a permit from the Department of Building and Safety.

9. **Construction and Demolition Waste** shall mean solid waste that results directly from construction, remodeling, repair, demolition, or deconstruction of buildings and other structures, does not contain hazardous waste (as defined in California Code of Regulations, Title 22, Section 66621.3, *et seq.*), and contains no more than one percent (1%) putrescible wastes by volume, calculated on a monthly basis. Construction and Demolition Waste includes, but is not limited to, asphalt, concrete, Portland cement, brick, lumber, wallboard, roofing material, ceramic tile, pipe, glass, carpet or associated packing.

10. **Gross Receipts** shall mean those receipts defined as Gross Receipts in Los Angeles Municipal Code Section 21.00 (a) generated by the collection of Solid Waste including, but not limited to, service, container rental, disposal and processing charges. For purposes of this Section and Sections 66.32.1 through 66.32.5, Gross Receipts shall not be applicable to receipts generated by the collection and sale of Source-Separated Materials or Co-Mingled Recyclables.

11. **Permittee** shall mean a Person issued an AB 939 Compliance Permit pursuant to the provisions of Subsection (a) of Section 66.32.1.

12. **Person** shall mean natural person, business, contractor, joint venture, joint stock company, firm, partnership, association, club, company, corporation, business trust, or organization, or the manager, employer, agent, servant, officer, or employee of any of them. Person shall not mean the City of Los Angeles, or any of its constituent entities, departments, boards, employees or officers.

13. **Self-hauler** shall mean a Person who is not primarily engaged in the business of collection, removal or transportation of Solid Waste but in the course of performing the Person's primary business function incidentally transports Solid Waste. Examples of Self-haulers include, but are not limited to, gardeners, landscapers, and household cleanup service firms. If the incidental collection, removal or transportation of Solid Waste includes Construction and Demolition Waste, however, the Person is not a Self-Hauler but instead is a Solid Waste Hauler subject to all of the requirements applicable to Solid Waste Haulers.

14. **Solid Waste** shall mean waste that the Department of Resources Recycling and Recovery (CalRecycle) has deemed acceptable for disposal at a Class III Landfill,

including Construction and Demolition Waste, and shall not include Source-Separated Material or Co-Mingled Recyclables.

15. **Solid Waste Hauler** shall mean any Person engaged in the business of providing or responsible for the collection, removal or transportation of Solid Waste, Construction and Demolition Waste, Source-Separated Materials, or Co-Mingled Recyclables generated within the City.

16. **Source-Separated Material** shall mean material that has been separated or kept separate from the solid waste stream at the point of generation and has not been commingled with other solid waste or recyclable materials. To qualify as Source-Separated Material, each type of material must be transferred in a separate container to a recycling center. Source-Separated Material includes, but is not limited to, Construction and Demolition Waste such as clean wood, clean concrete or metals.

Sec. 2. Section 66.32.1 of Los Angeles Municipal Code is amended to read as follows:

SEC. 66.32.1. SOLID WASTE HAULER PERMIT REQUIREMENTS.

(a) **Permit Required.**

(1) Persons who collect, remove or transport Solid Waste, including Construction and Demolition Waste, Source-Separated Materials or Co-Mingled Recyclables, generated within the City, must obtain, in addition to all other required permits, an AB 939 Compliance Permit from the Bureau of Sanitation.

(2) Persons who arrange for the removal or transportation of Construction and Demolition Waste generated within the City, and who do not contract or otherwise arrange with a Permittee to remove or transport such Waste, must obtain an AB 939 Compliance Permit from the Bureau of Sanitation.

(3) **Exceptions to Permit Requirement.** Subdivision (1) of this Subsection does not apply to Self-Haulers who in the course of performing their primary business function incidentally collect, remove or transport Solid Waste (excluding Construction and Demolition Waste), Source-Separated Materials or Co-Mingled Recyclables, generated within the City, and the total amount of all such Wastes, Materials and Recyclables collected, removed or transported is less than one thousand (1,000) tons per year.

(4) **Exceptions to Permit Requirement.** Subdivision (1) of this Subsection does not apply to residence owners who generate Construction and Demolition Waste during the course of personally performing construction and demolition projects at their own residences and transport such Waste in their own vehicles.

(b) Construction and Demolition Waste Transportation Requirements.

(1) Every Person required to obtain an AB 939 Compliance Permit who collects, removes or transports Construction and Demolition Waste within the City must transport the Waste for disposition as follows:

(i) delivery of the Construction and Demolition Waste to a Certified Construction and Demolition Waste Processing Facility; or

(ii) delivery of the Construction and Demolition Waste to a facility other than a Certified Construction and Demolition Waste Processing Facility if at least two Certified Construction and Demolition Waste Processing Facilities refuse to accept the Waste and provide the Person with a rejection slip. Rejection slips must be maintained for a minimum of three years from the date the Person received the rejection slips.

(2) Subdivision (1) of this Subsection shall not apply to the collection, removal, or transportation of Source-Separated Material generated from a project within the City and delivered to a recycling facility, or segregated for on-site recycling.

(3) Subdivision (1) of this Subsection shall not apply to residence owners who generate Construction and Demolition Waste during the course of performing construction and demolition projects at their own residences and transport such Waste in their own vehicles.

(c) Reporting and Documentation Requirements.

(1) Every Person required to obtain an AB 939 Compliance Permit shall submit reports as required by the Bureau of Sanitation, on forms provided by the Bureau, documenting all disposal and diversion amounts of materials generated within the City and other information that the Bureau may require.

(2) Documentation. Every Person required to obtain an AB 939 Compliance Permit must maintain documentation of all disposal and diversion amounts of materials generated within the City and other documents that the Bureau may require. Such documentation includes, but is not limited to, invoices, weight tickets, rejection slips (where issued), weight tickets from a destination other than a Certified Construction and Demolition Waste Processing Facility (where issued), and documents identifying construction and demolition project location, quantity of Construction and Demolition Waste, quantity of Solid Waste, quantity of Source-Separated Material and Co-Mingled Recyclables, and destination of each load of material. The documentation required to be maintained by this Subdivision must be kept for at least three years from the date of document creation.

(d) **Bins.** Bins owned by Solid Waste Haulers that are used to collect, remove or transport Solid Waste, Construction and Demolition Waste, Co-Mingled Recyclables or Source-Separated Material generated within the City must be clearly marked with the Solid Waste Hauler's name and phone number.

Sec. 3. Section 66.32.2 of Los Angeles Municipal Code is amended to read as follows:

SEC. 66.32.2. AB 939 COMPLIANCE FEES.

(a) Solid Waste Haulers required to obtain an AB 939 Compliance Permit must pay a fee equal to ten percent (10%) of their annual Gross Receipts. Funds from such fees shall be deposited into the Citywide Recycling Trust Fund established at Section 5.497 of the Los Angeles Administrative Code.

(b) Fees imposed pursuant to the provisions of Subsection (a) of this Section are payable quarterly, and payment is due on or before the thirtieth (30th) day following the end of the calendar quarter in which Gross Receipts are generated. Fees not paid on or before the thirtieth day following the end of the calendar quarter shall be deemed delinquent, and an additional charge equal to two and one-half percent (2.5%) of the fee owed shall be added to the fee, and the additional charge shall become part of the fee owed. An additional two and one-half percent (2.5%) shall be added to such fees for each subsequent calendar quarter that payment of the fee owed is not received by the City, not to exceed a total of ten percent (10%).

(c) Subsection (a) of this Section shall not apply to Solid Waste Haulers who have obtained an AB 939 Compliance Permit and whose annual tonnage is below one thousand (1,000) tons per year.

(d) Gross Receipts generated from collection or sale of Source-Separated Materials or Co-Mingled Recyclables shall not be subject to the AB 939 Compliance Fee.

(e) Fees imposed pursuant to the provisions of Subsection (a) of this Section shall be owed in addition to any taxes owed pursuant to the provisions of Los Angeles Municipal Code Section 21.00, et. seq., and in addition to any other taxes, fees or charges owed for the same period.

(f) The Board of Public Works shall allocate a portion of the fees collected pursuant to the provisions of Subsection (a) of this Section for use as incentives to increase recycling activities. The percentage may be adjusted annually, shall be subject to Council approval, and shall be based on the amount of diversion reported by Solid Waste Haulers.

Sec. 4. Section 66.32.3 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 66.32.3. VIOLATIONS, PENALTIES, AND PERMIT SUSPENSION AND REVOCATION.

(a) **Violations for Collecting, Removing or Transporting Solid Waste without a Valid AB 939 Compliance Permit.** Any Person who willfully violates any requirement of Subsection (a) of Section 66.32.1 shall be guilty of a misdemeanor. The penalty upon conviction shall not be more than a fine of \$1,000 or imprisonment in the county jail, not exceeding six months, or both fine and imprisonment. Violations are deemed to be continuing violations, and each day that a violation continues is deemed to be a new and separate offense.

(b) **Administrative Penalties for Unlawful Disposition of Construction and Demolition Waste.** Any Person who fails to deliver Construction and Demolition Waste to a Certified Construction and Demolition Waste Processing Facility as required in Subsection (b) of Section 66.32.1 shall pay the following Administrative Penalties: \$1,000 for the first violation; \$2,000 for the second violation that occurs within six months of a first violation; \$5,000 for a third violation that occurs within six months of a second violation; and \$5,000 for each violation that occurs after imposition of a \$5,000 penalty. The Bureau of Sanitation shall provide written notice of penalties assessed pursuant to the provisions of this Subsection by issuance of a Notice of Penalty Assessment. Delivery of each and every load of Construction and Demolition Waste in violation of the provisions of Subsection (b) of Section 66.32.1 shall constitute a separate violation of the Subsection.

(c) **Permit Suspension, and Revocation.** The City reserves the right to suspend or revoke an AB 939 Compliance Permit upon 30 days notice by issuance of a Notice of Suspension or Notice of Revocation, if the Permittee fails to comply with any of the terms and conditions specified in the Permit or in this Code, including but not limited to waste transportation requirements imposed pursuant to the provisions of Subsection (b) of Section 66.32.1, reporting and documentation requirements imposed pursuant to the provisions of Subsection (c) of Section 66.32.1, and payment of fees imposed pursuant to the provisions of Section 66.32.2. Violations of other Los Angeles Municipal Code sections or other laws may constitute just cause for suspension or revocation of an AB 939 Compliance Permit.

(d) **Appeals of Notice of Penalty Assessment, Notice of Suspension and Notice of Revocation.**

(1) **Right to Appeal.** Where a Person is issued a Notice of Penalty Assessment, Notice of Suspension or Notice of Revocation pursuant to the provisions of Subsections (b) or (c) of this Section, and the Person believes that the Notice was issued in error or that the penalty assessed was excessive or in error, the Person may appeal by filing, within thirty (30) days of when the Bureau of Sanitation mailed the Notice of Penalty Assessment, Notice of Suspension or Notice of Revocation, a written request for a hearing before the Board. If the Board does not receive the written request for a hearing within thirty (30) days of when the Bureau of Sanitation mailed the Notice of Penalty Assessment, Notice of Suspension or Notice of Revocation, the penalty assessment, suspension, or

revocation, whichever is applicable, shall be deemed final and no further administrative relief can be obtained

(2) If an Appellant timely files a written request for a hearing pursuant to the provisions of Subdivision (1) of this Subsection, the penalty assessment, suspension or revocation that is the subject of the request shall be stayed pending a hearing before the Board.

(3) After receipt of a written request for a hearing filed pursuant to and in compliance with the provisions of Subdivision (1) of this Subsection, the Board will set the matter on one of its regular agendas as soon thereafter the Board deems practical. At the Board hearing, the Board shall hear the testimony of the Appellant, Bureau of Sanitation staff, and other testimony it deems relevant. Appellant shall have the burden of proof, and shall present substantial evidence on the Appellant's behalf. Upon conclusion of the hearing, the Board shall issue a verbal or written decision. The Board may affirm the Notice of Suspension or Notice of Revocation or rescind it, and may affirm the penalty assessment, decrease it, or cancel it. If the Board affirms a Notice of Suspension or Notice of Revocation, the suspension or revocation shall be effective on the date of the Board's decision, unless the Board decides otherwise. If the Board affirms a penalty assessment, the amount affirmed shall be owed thirty (30) days after issuance of the Board's decision, unless the Board decides otherwise. Once the Board issues a decision, the matter is final and no further administrative relief is provided by the City.

(e) **Authority to Take Possession of Permit.** The Director of the Bureau of Sanitation, or an authorized representative, may take possession of any AB 939 Compliance Permit, or other document issued pursuant to the provisions of Section 66.32 through 66.32.2, which is expired or is suspended, revoked, or otherwise invalid. Any decal approved by the Board that is not attached to the vehicle for which it was issued may be seized by the Director of the Bureau of Sanitation or an authorized representative.

Sec. 5. Section 66.32.4 of Los Angeles Municipal Code is amended to read as follows:

SEC. 66.32.4. COMPLIANCE PERMIT TERMS AND CONDITIONS.

- (a) The City shall not limit the number of AB 939 Compliance Permits issued.
- (b) All AB 939 Compliance Permits shall be subject to the terms and conditions specified in the Permit, and to all other applicable federal, state and local laws and regulations, including the Los Angeles Municipal Code.
- (c) The City has the right to revise or add to the requirements of the AB 939 Compliance Permit to the extent permitted by law.

(d) The City may revoke or suspend any AB 939 Compliance Permit as provided in the terms of the Permit, by this Code, or as otherwise allowed by law.

(e) Inspection and Site Visits.

(1) The Director of the Bureau of Sanitation, or the Director's designee, shall have the right at any time during normal business hours to inspect the records of any Permittee for the purpose of determining compliance with AB 939 and other reporting requirements, to determine proper calculation and payment of fees, and to verify the lawful disposition of Construction and Demolition Waste. The City will provide Permittee reasonable notice of its intention to inspect the Permittee's records.

(2) The Director of the Bureau of Sanitation, or the Director's designee, shall have the right at any time to conduct site visits to determine compliance with Section 66.32 through 66.32.3, including, but not limited to, inspections of construction or demolition sites within the City to verify diversion requirements of Subsection (b) of Section 66.32.1.

(f) The Bureau of Sanitation shall have the authority to administer all provisions of Sections 66.32 through 66.32.5, and to enforce the provisions by any and all lawful means.

Sec. 6. Section 66.32.5 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 66.32.5. INDEMNIFICATION. All AB 939 Compliance Permits shall include a provision that the Permittee undertakes and agrees to defend, indemnify, and hold harmless the City, and all of the City's Boards, Officers, Agents, Employees, Assigns and Successors in Interest, from and against any all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damages or liability of any nature whatsoever, for death or injury to any person, including Permittee's employees and agents, or damage to or destruction of any property of either the City or Permittee or of third parties, arising in any manner by reason of the Permittee's negligence, willful misconduct, or errors and omissions incident to or arising from the issuance of the AB 939 Compliance Permit or the operations taken pursuant to issuance of the Permit.

Sec. 7. Sections 66.32.6, 66.32.7, and 66.32.8 of the Los Angeles Municipal Code are repealed.

Sec. 8. Severability. If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining portions of this ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Sec. 9. Operative Date. The provisions of this ordinance shall be operative as of January 1, 2011.

Sec. 10. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By Judith E. Reel
JUDITH E. REEL
Deputy City Attorney

Date December 12, 2010

File No. 09-3029