



Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: March 10, 2020 Meeting date: April 13, 2020

Subject: Second Reading and Adoption of Ordinance No. 462

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 462 determining the project is categorically exempt from the California Environmental Quality Act and amending Malibu Municipal Code Sections 8.32.020 (Definitions), 8.32.600 (Containers For Garbage, Market Refuse, and Rendering Waste), 8.32.660 (Containers-Commercial and Industrial), and 8.32.720 (Violation-Penalty) and adding Section 8.32.665 (Implementation) to Chapter 8.32 (Solid Waste And Recyclable Materials) in Title 8 (Health And Safety) to require commercial/industrial property occupants to lock solid waste containers, bins and other equipment.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This project was added to the Adopted Work Plan for Fiscal Year 2019-2020 during the mid-year budget process.

DISCUSSION: On March 9, 2020, the Council introduced on first reading Ordinance No. 462.

ATTACHMENT: Ordinance No. 462

ORDINANCE NO. 462

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING SECTIONS 8.32.020 (DEFINITIONS), 8.32.600 (CONTAINERS FOR GARBAGE, MARKET REFUSE, AND RENDERING WASTE), 8.32.660 (CONTAINERS-COMMERCIAL AND INDUSTRIAL), AND 8.32.720 (VIOLATION-PENALTY) AND ADDING SECTION 8.32.665 (IMPLEMENTATION) TO CHAPTER 8.32 (SOLID WASTE AND RECYCLABLE MATERIALS) IN TITLE 8 (HEALTH AND SAFETY) TO REQUIRE COMMERCIAL /INDUSTRIAL PROPERTY OCCUPANTS TO LOCK SOLID WASTE CONTAINERS, BINS AND OTHER EQUIPMENT

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1. Recitals

A. Sanitary conditions need to be maintained in and around solid waste containers to prevent the harboring and breeding of rodents and to minimize the use of rodenticides.

B. The California Integrated Waste Management Act of 1989, as amended, codified at Public Resources Code § 40000 et. seq., authorizes cities to regulate all aspects of solid waste handling which are of local concern, including, but not limited to, the manner of collection and disposal of solid waste.

C. The City Council of Malibu has determined that the public health, safety, and welfare of the residents of Malibu will be promoted and the environmental quality of the city and surrounding areas will be preserved by requiring commercial/industrial property occupants to lock their solid waste containers.

SECTION 2. Subdivision 7 of paragraph A in Section 8.32.010 of the Malibu Municipal Code is hereby deleted.

SECTION 3. Section 8.32.020 (Definitions) of the Malibu Municipal Code is hereby amended as follows:

The following words and phrases, for the purposes of this chapter, are defined and shall be construed as hereunder set out:

“Bin” means a medium sized Solid Waste container between 1 cubic yards and 6 cubic yards.

“City” means the City of Malibu.

“City Employee” means an employee or authorized agent of the City of Malibu.

“Collection” means the operation of gathering together and/or transporting by means of a motor vehicle any classification of Solid Waste or recyclables within the city of Malibu.

“Collector” means any Person who has been issued a franchise to provide Solid Waste and/or recyclable collection services in the city or who has been given the notice provided for in Public Resources Code Sections 49520 and 49521 and who has been issued a permit by the city to operate for the unexpired period of time set forth in such notice or any other extension thereof approved by the city. Collector shall include both Commercial and Residential Collectors.

“Commercial Collector” means a Collector providing Solid Waste collection and/or recyclable services to Commercial and Industrial premises, including without limitation construction and/or demolition sites, pursuant to a franchise or an annual permit granted by the city.

“Commercial/Industrial Business Owner” means any person, firm, corporation or other enterprise or organization holding or occupying, alone or with others, Commercial/Industrial Premises, whether or not it is the holder of the title or the owner of record of the Commercial/Industrial Premises.

“Commercial Premises” means any property occupied for or devoted to a use permitted in the commercial, institutional and public zones pursuant to the provisions of the Malibu zoning ordinance, or whose occupant or owner holds a valid business license from the city or any multiple dwelling containing five or more dwelling units.

“Construction and Demolition Waste” means any debris resulting from the construction, modification or demolition of any structure, roadway or property. “Construction and Demolition Waste” includes but is not limited to asphalt, concrete, drywall, metals, roofing materials, soils and wood.

“Container” means any vessel, tank, receptacle, Dumpster, box or Bin used or intended to be used for the purpose of holding Solid Waste for collection.

“Designated Collection Location” means the place where the residential householder or commercial or industrial occupant shall place, and from where the Collector is to collect, Solid Waste and recyclables in containers designated for that purpose.

“Disposal” means the complete operation of treating and/or disposing of Solid Waste after the collection thereof.

“Dumpster” or “Roll-Off Bins” means large Solid Waste and Recycling Containers delivered via the use of a roll-off vehicle. Typical sizes are ten (10) yard, twenty-five (25) yard, thirty (30) yard and forty (40) yard Containers.

“Garbage” means all animal, vegetable and other refuse from kitchen and household wastes resulting from the preparation of food or drinks; all animal, vegetable and other refuse from

commercial establishments resulting from the manufacture or processing of food or drink to be consumed elsewhere than on the premises; and all decayed and unsound meat, fish, vegetables and fruit from meat, fish, vegetables and fruit markets, and all animal, vegetable and other waste from such markets.

“Greenwaste/Yard and Wood Waste” means any debris that is composed of organic material or plantlike matter which is a result of seasonal variations, landscape or gardening activities. This waste is to include, without limitation, grass clippings, leaves, shrubs, trees, branches stumps, flowers, plant stalks and wood.

“Hazardous Waste” means and includes waste defined as hazardous by Public Resources Code Section 40141 as it now exists or may subsequently be amended, namely, a waste or combination of wastes, which because of its quantity, concentration, toxicity, or physical, chemical or infectious characteristics, may do either of the following: (i) cause or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; (ii) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. “Hazardous Waste” includes extremely hazardous waste and acutely hazardous waste, and any other waste as may hereafter from time to time be designated as hazardous by the Environmental Protection Agency (“EPA”) or other agency of the United States Government, or by the California Legislature or any agency of the state of California empowered by law to classify or designate waste as hazardous, extremely hazardous or acutely hazardous.

“Holiday” means:

New Year’s Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Veterans Day

Christmas Day

“Holiday” also means any other day designated as such in a contract between a collector and the labor union serving as the exclusive representative of that collector’s employees, provided the holiday is established or recognized by resolution of the city council.

“Industrial Premises” means any property occupied or used for any purpose (other than residential or commercial uses) authorized or permitted in the industrial zones under the provisions of the Malibu zoning ordinance.

“Lock Bar” means a metal bar that can be installed on a Bin that allows the lid to be locked to the Bin with the use of a Padlock.

“Manager” or “City Manager” means the city manager or his or her designee of the city.

“Manure” means the waste droppings from any animal not disposed of through sewers or on-site wastewater systems.

“Officer” means the president, vice-president, treasurer or other duly designated representative of a Collector.

“Organic Waste” means food waste, Green Waste, landscape and pruning waste, non-hazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

“Padlock” means a lock that can be locked and unlocked with a combination code or control key.

“Parcel of Real Property” means a parcel of real property as shown on the local secured tax rolls of the county of Los Angeles.

“Permittee” means a Solid Waste Collector who has obtained a permit to collect, transport and remove Solid Waste and/or recyclables from the boundaries of the city of Malibu.

“Person” includes, without limitation any individual, firm, co-partnership, general partnership, limited partnership, joint venture, association, entity, corporation, or any other group or combination thereof acting as a unit.

“Public Agency” means any governmental agency or department thereof, whether federal, state, or local.

“Recyclable Materials” means those materials that may be separated on a commercially reasonable basis from Solid Waste and returned 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. “Recyclable materials” includes any materials identified by the Manager for which a market exists, including, but not limited to: plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, and cans.

“Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Solid Waste, and returning them 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. “Recycling” does not include transformation as defined in Public Resources Code Section 40201.

“Recycling Container” means a container provided to Residential Premises for use in collecting and moving commingled Recyclable Materials to curbside for collection by the Collector. The container shall have a capacity of at least thirty-two (32) gallons with a lid and shall be marked with the city recycling logo. The type, color and design of the container provided shall be subject to approval by the City Manager. “Recycling Container” shall also refer to a container used by Commercial and Industrial premises for storing and collecting commingled recyclables.

“Residential Collector” means a collector providing Solid Waste and/or recyclable collection services to Residential Premises, pursuant to a franchise or an annual permit granted by the city or required by this chapter.

“Residential Householder” means any person holding and occupying Residential Premises, whether or not the owner, singly or with his or her family, within the territorial limits of the city.

“Residential Owner” means the owner of any Residential Premises in the city.

“Residential Premises” means any residential property in the city, except any multiple dwelling containing five or more dwelling units.

“Rubbish” means and includes all waste and discarded matter and materials, combustible or incombustible, which is not garbage as defined in this section.

“Solid Waste” means all putrescible and nonputrescible solid and semisolid wastes, generated in or upon, related to the occupancy of, remaining in or emanating from Residential Premises or Commercial/Industrial Premises, including Garbage, trash, refuse, Rubbish, ashes, industrial wastes, Construction and Demolition Wastes, discarded home appliances, Manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes, as defined in Public Resources Code Section 49503, excluding liquid wastes and abandoned vehicles; provided, however, that “Solid Waste” shall not include Hazardous Waste.

“Solid Waste Enterprise” means any individual, partnership, joint venture, unincorporated private organization, or private corporation regularly engaged in the business of providing Solid Waste handling services.

“Temporary Bin/Roll-Off Drop Box” means a Container provided by a collector and use for a temporary period of time for the Disposal of Solid Waste, rubbish, or Construction/Demolition Waste or other waste not generated on a regular or continuing business.

“Tonnage Form” means the document adopted by the city council which is used to determine the net amount of Solid Waste and/or recyclables disposed of in a permitted or certified facility.

“Tonnage Report” includes a tonnage form or a copy of such form prepared by the Collector or an Officer or agent of the collector. Tonnage reports shall also include necessary information to verify the report or supplied information.

“Transportation” means the process of moving Solid Waste through the city by means of a motor vehicle.

“Waste Disposal Facility” means any landfill, transfer station, incinerator, land reclamation project, recycling facility, or other similar site or facility which is used or intended to be used for the transfer, consolidation, processing or disposal of Solid Waste.

“Weight Tickets/Invoices” means receipts provided by a waste disposal or recycling facility reflecting the net amount of Solid Waste disposed of by a collector at the correlating facility.

SECTION 4. Section 8.32.600 of the Malibu Municipal Code is hereby amended as follows:

8.32.600 Containers for Solid Waste, Recyclable Materials, and Organic Waste.

Any Container to be placed for collection containing Solid Waste, Recyclable Materials or Organic Waste shall have a tightly fitting lid. The lid shall be used at all times.

SECTION 5. Section 8.32.660 of the Malibu Municipal Code is hereby amended as follows:

8.32.660 Containers—Commercial and industrial.

A. Every Collector who rents, owns or controls any Container or other equipment used for the storage of commercial or industrial Solid Waste, Recyclable Material or Organic Waste shall, at all times:

1. Place and maintain on the outside of such Container or other equipment, in legible letters and numerals not less than one inch in height the Collector’s name or firm name, and telephone number, in a color contrasting to the background of the Container;

2. Keep Containers and lids in a good, clean and sanitary condition to the satisfaction of the Manager;

3. Provide Containers on casters of a size, shape and construction approved by the Manager, in writing, for all Industrial Business Owners;

4. Provide Containers, for all Commercial Business Owners, that are of sufficient size and are constructed to prevent the release of any amount of Solid Waste, Recyclable Materials and Organic Waste; and

5. Offer for rent, ownership, or control Bins with double-walled plastic lids, Lock Bars, and Padlocks to be used for Solid Waste, Recyclable Material and Organic Waste.

B. All Commercial/Industrial Business Owners and property owners using Containers and other equipment for the storage of commercial or industrial Solid Waste, Recyclable Materials or Organic Waste shall, at all times:

1. Maintain all Containers and trash enclosure areas in a clean and sanitary condition to the satisfaction of the Manager;

2. Use Bins with double-walled plastic lids, Lock Bars, and Padlocks for Solid Waste, Recyclable Materials and Organic Waste;

3. Keep the lids of Bins closed and locked at all times except when disposing, removing or inspecting Solid Waste, Recyclable Materials and Organic Waste.

SECTION 6. Section 8.32.665 of the Malibu Municipal Code is hereby added to read as follows:

Section 8.32.665 Implementation

A. The Manager may waive the provisions of Sections 8.32.660 if:

1. The applicant demonstrates a feasibility-based hardship. The Person seeking the waiver must demonstrate to the Manager's satisfaction that utilizing the required product is not reasonably feasible to implement;

2. The applicant demonstrates compliance is unreasonably financially prohibitive. The Person seeking the exemption must demonstrate to the Manager's satisfaction that there is no suitable and reasonably affordable product available; or

3. The applicant demonstrates strict application of the specific requirement would create an undue hardship, or practical difficulty, not generally applicable to other persons in similar circumstances, and good cause is shown.

B. A Person seeking a waiver must submit a written application on a form approved by Manager. The Manager may require the applicant to submit additional information or documentation to make a determination regarding the waiver requested. The Manager shall review requests for waivers on a case-by-case basis and may grant the waiver in whole or in part, with or without conditions, for a period of up to twelve (12) months. An applicant for renewal of a waiver must apply for a new waiver period no later than sixty (60) days prior to the expiration of the then-current period to preserve a continuous waiver status. The Manager shall review each application anew and base his or her determination on the most current information available. In no case shall a waiver be retroactive or continue past January 1, 2022.

C. Any determination made by the Manager pursuant to this section shall be appealable to the city council. Any appeal must be in writing, filed with the city within five calendar days of the at-issue Manager decision, and shall specifically set forth the grounds for the appeal.

SECTION 7. Section 8.32.720 of the Malibu Municipal Code is hereby amended as follows:

8.32.720 Violation—Penalty.

A. The Manager shall have primary responsibility for enforcement of this chapter. The Manager is authorized to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, inspecting any Commercial or Industrial Premises to verify compliance.

B. In addition to any other remedies that may be provided for by the terms of a collection permit or franchise agreement, and in addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the municipal code, violations of the provisions of this chapter are subject to the administrative penalty provisions of Chapter 1.10.

C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

D. The remedies and penalties provided in this section are cumulative and not exclusive of one another.

SECTION 8. Severability

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 9. Effective Date

This Ordinance shall take effect on June 1, 2020.

SECTION 10. California Environmental Quality Act

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is

exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 11. Certification

The City Clerk shall certify the adoption of this Ordinance and enter it into the book of original ordinances

PASSED, APPROVED AND ADOPTED this 13th day of April 2020.

KAREN FARRER, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney