



Legislation Details (With Text)

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Title: BILL (for introduction and adoption) - An emergency ordinance rescinding Council action adopting Ordinance No. 2017-54 related to recycling centers. (Requires 5 affirmative votes)

Sponsors: City Attorney's Office

Indexes:

Code sections:

Attachments: 1. Emergency Ord-Rescinding Ord 2017-54.pdf

Date	Ver.	Action By	Action	Result
6/14/2018	1	City Council	adopted	

REPORT TO THE CITY COUNCIL

June 14, 2018

FROM: Douglas T. Sloan
CITY ATTORNEY

SUBJECT

BILL (for introduction and adoption) - An emergency ordinance rescinding Council action adopting Ordinance No. 2017-54 related to recycling centers. (Requires 5 affirmative votes)

RECOMMENDATION

It is recommended the City rescind Ordinance No. 2017-54 related to recycling centers, pursuant to court order.

EXECUTIVE SUMMARY

On October 12, 2017, Council voted to adopt Ordinance 2017-54, amending subsection (B) of Section 15-2750 of the Development Code relating to recycling facilities. The amendment included changes to limit CRV Recycling Centers to within the footprint of a business subject to California Public Resources Code section 14571.6, and require existing CRV centers comply with the proposed text amendment either six months or one year from the effective date of the ordinance, depending on if the facility is located within a temporary or permanent structure, after which the operator must file a new entitlement application (Conditional Use Permit) to lawfully operate after the grace period.

Ordinance 2017-54 was challenged in Superior Court by the California Grocers' Association and Recycling Coalition for Fresno Jobs. In compliance with the Court's Order after Hearing on April 30, 2018 in California Grocer's Association v. City of Fresno, Fresno Superior Court Case No. 17CECG03787 and pursuant to pending court proceedings in that action, it is recommended the City rescind the action taken approving Ordinance 2017-54.

Following rescission of Ordinance 2017-54, Development Code section 15-2750 shall revert to the law in place prior to November 18, 2017 (the effective date of Ordinance 2017-54).

ENVIRONMENTAL FINDINGS

California Public Resources Code Section 21168.9(a)(1) states that "[i]f a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination finding or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes...[a] mandate that the determination, finding, or decision be voided by the public agency, in whole or in part."

In addition, CEQA Guidelines section 15270(a) states that "CEQA does not apply to projects which a public agency rejects or disapproves."

Here, the Court ordered the City to rescind Ordinance 2017-54, which is an order that the City's previous approval of that ordinance be voided. As such, compliance with the Court's Order after Hearing means that Ordinance 2017-54 will no longer be approved and is effectively disapproved. Therefore, disapproval of Ordinance 2017-54 is not subject to CEQA and no further environmental assessment is required.

LOCAL PREFERENCE

Not applicable.