

## Chapter 15.70

### CONSTRUCTION AND DEMOLITION DEBRIS\*

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\*Code reviser's note: Ordinance No. 1660 added this chapter as Chapter 15.72. It has been editorially renumbered to avoid duplication.

#### 15.70.010 Findings.

The city council of the city of Livermore finds that:

A. The state of California requires that each local jurisdiction in the state divert 50 percent of discarded materials from landfills from the base year (1990) to December 31, 2000, and thereafter to maintain or exceed that diversion rate. (California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 and following; also known as AB 939.)

B. Every city and county in California, including Livermore, could face fines of up to \$10,000 a day for not meeting the above mandated goal.

C. The voters of Alameda County, through the Waste Reduction and Recycling Act of 1990 (Measure D), have adopted a policy goal to reduce the total tonnage of materials generated in Alameda County and placed in landfills generated by 75 percent by the year 2010.

D. In 2000, construction and demolition debris constituted approximately 21 percent of the materials placed in landfills in Alameda County and approximately 30 percent of the waste stream in the city. There is significant potential to reduce and recycle this waste.

E. Reusing and recycling construction and demolition debris are essential to further the city's efforts to reduce waste and comply with AB 939 and Measure D goals.

F. Construction and demolition debris waste reduction and recycling have been proven to reduce the amount of such material which is placed in landfills, increase site and worker safety, and be cost effective.

G. Except in unusual circumstances, it is feasible to divert an average of at least 50 percent of all construction and demolition debris from construction, demolition, and renovation projects.

H. To ensure compliance with this chapter and to ensure that those contractors that comply with this chapter are not placed at a competitive disadvantage, it is necessary to impose a performance security requirement. (Ord. 1660 § 1, 2002)

#### 15.70.020 Definitions.

In this chapter, the following definitions apply:

“Applicant” means any individual, or public or private entity that applies to the city for a building permit (for construction, demolition or renovation).

“Building official” means the city's chief building official or his or her designee.

“Construction” means the building of any facility or structure or any portion thereof including any improvements to an existing facility or structure.

“Construction and demolition debris” means used or discarded materials (not including solid waste) separated from solid waste or refuse at the site of generation and removed from the premises during construction, renovation or demolition.

“Conversion rate” means the rate set forth in the standardized conversion rate table used by the city and the Alameda County waste management authority for use in estimating the volume or weight of materials identified in a waste management plan.

“Deconstruction” means the process of carefully dismantling a building or structure in order to salvage components for reuse and recycling.

“Demolition” means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

“Diversion requirement” means the diversion of at least 50 percent of the total construction and demolition debris generated by a project by reuse or recycling, or the requirement established by the building official for the project under an exemption. (See LMC 15.70.090.)

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“Divert” means to use material for any purpose other than disposal in a landfill or transformation facility. “Divert” includes reuse and recycle.

“Performance security” means a performance bond, surety bond, money order, letter of credit, or certificate of deposit submitted to the city under LMC 15.70.080.

“Project” means any activity involving construction, demolition or renovation, and which requires issuance of a building permit. “Project” also includes city-sponsored construction, demolition or renovation. “Regulated project” means a construction or renovation project of \$300,000 or more, or a demolition project whose total cost is \$40,000 or more. (See also LMC 15.70.030.)

“Recyclable materials” means those nonhazardous residential, commercial, or industrial materials or byproducts which are set aside, handled, packaged, or offered for collection in a manner different than solid waste, for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities. No discarded material shall be considered to be recyclable material unless it is separated from solid waste and compostable materials. Recyclable materials may include, but are not limited to, newspaper, mixed paper, glass, metal and aluminum cans, plastic bottles, corrugated cardboard, used motor oil, and construction and demolition debris managed in a manner consistent with an approved waste management plan.

“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.

“Renovation” means any change, addition, or modification to an existing structure.

“Reuse” means further or repeated use of construction or demolition debris.

“Salvage” means the controlled removal of construction or demolition debris from a building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

“Solid waste” means all putrescible and nonputrescible solid, semi-solid and associated liquid wastes, including garbage, trash, refuse, paper, rub-

bish, ashes, industrial wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not a hazardous waste, special waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include the following:

1. Hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code.

2. Infectious waste; provided, that the infectious waste, whether treated or untreated, is not disposed of at a solid waste facility. Infectious waste which has been treated and which is deemed to be solid waste shall be regulated under this chapter.

3. Recyclable materials.

4. Compostable materials.

5. Construction and demolition debris.

“Total costs” means the total construction value of the project as calculated by the building division using the city’s standard commercial and residential valuation formulas.

“Waste management plan” or “WMP” means a plan approved by the city, under this chapter, for a regulated project.

“Waste management plan fee” or “WMP fee” means the fee charged by the city to administer and implement this chapter. (Ord. 1660 § 1, 2002)

### 15.70.030 Regulated projects.

The applicant for a regulated project (a construction or renovation project of \$300,000 or more, or a demolition project of \$40,000 or more) shall comply with this chapter. Compliance with this chapter shall be listed as a condition of approval on any building or demolition permit issued for a regulated project. The failure to include such a condition does not relieve the applicant from complying with this chapter. (Ord. 1660 § 1, 2002)

### 15.70.040 Authority to implement.

The chief building official is authorized to implement and is responsible for implementing this chapter. (Ord. 1660 § 1, 2002)

### 15.70.050 Waste management plan.

A. WMP Application. Each applicant for a building or demolition permit shall submit a com-

pleted waste management plan (WMP) with the first plan check of an individual project or at the first check of a residential master plan in the case of a residential project. The completed WMP shall include all of the following:

1. The estimated volume or weight of project construction and demolition debris to be generated, by materials type;
2. The maximum volume or weight of such materials that can feasibly be diverted by reuse or recycling. In estimating the volume or weight of materials identified in the WMP, the applicant shall use the standardized conversion rates approved by the city for this purpose;
3. The vendor or facility that the applicant proposes to use to collect or receive that material;
4. The estimated volume or weight of construction and demolition materials that will be landfilled; and
5. The total square footage of the area to be constructed or demolished.

B. In preparing the WMP, an applicant for a plan check involving the removal of all or part of an existing structure shall consider deconstruction, to the maximum extent feasible, and shall make the materials generated thereby available for salvage before placing in a landfill. (Ord. 1660 § 1, 2002)

#### **15.70.060 Evaluation of WMP.**

A. Approval. The building official shall approve a WMP only if he or she first determines that all of the following conditions have been met:

1. The WMP provides all of the information set forth in LMC 15.70.050; and
2. The WMP shows that at least 50 percent of all construction and demolition debris generated by the project will be diverted.

If the building official determines that all of the above conditions have been met, he or she shall mark the WMP "Approved," return a copy of the WMP to the applicant, and place a copy of the approved WMP in the building permit file for the project.

B. Denial. If the building official determines that the WMP is incomplete or fails to show that at least 50 percent of all construction and demolition debris generated by the project will be diverted, he or she shall either:

1. Return the WMP application to the applicant marked "Denied," including a statement of reasons, and retain a copy of the denial in the build-

ing department. The building division shall then immediately stop processing the plan check; or

2. Return the WMP to the applicant marked "Further Explanation Required," and retain a copy in the building department.

C. Approval Required Before Building Permit. Notwithstanding any other provision of this code, no building permit shall be issued for any regulated project until:

1. The building official has approved the WMP. However, approval is not required if the building official determines that an emergency demolition is required to protect public health or safety;
2. The applicant posts the required performance security, under LMC 15.70.080; and
3. The applicant pays the WMP fee in the amount established by city council resolution. (Ord. 1660 § 1, 2002)

#### **15.70.070 Compliance with WMP.**

A. Applicant's Documentation. Before the issuance of a certificate of occupancy of any regulated project, or at the time of issuing the last certificate of occupancy for units within a residential phased project, the applicant shall submit to the building official documentation that it has met the diversion requirement for the project. This documentation shall include all of the following:

1. Receipts from the vendor or facility which collected or received each material showing the actual weight or volume of that material;
2. A copy of the approved WMP, with the addition of the actual volume or weight of each material diverted or placed in a landfill;
3. Any additional information the applicant believes is relevant in determining efforts to comply in good faith with this chapter.

B. Weighing of Wastes. An applicant shall make reasonable efforts to ensure that all construction and demolition debris diverted or placed in a landfill is measured and recorded using the most accurate method of measurement available. To the extent practical, all construction and demolition debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition debris for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements

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to weight, the applicant shall use the standardized conversion rates approved by the city for this purpose.

C. Determination of Compliance and Release of Performance Security. The building official shall review the information submitted under LMC 15.70.050 and determine whether the applicant has complied with the diversion requirement, as follows:

1. Full Compliance. If the building official determines that the applicant has fully complied with the diversion requirement, he or she shall cause the full performance security to be released to the applicant within 30 days of the applicant's submission of the documentation required under subsection A of this section.

2. Good Faith Effort to Comply. If the building official determines that the diversion requirement has not been achieved, he or she shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with this chapter. In making this determination, the building official shall consider the availability of markets for the construction and demolition debris placed in a landfill, the size of the project, and the documented efforts of the applicant to divert construction and demolition debris. If the building official determines that the applicant has made a good faith effort to comply with this chapter, he or she shall release the performance security, or a portion of it in proportion to the degree of compliance, to the applicant within 30 days of the applicant's submission of the documentation required under subsection A of this section.

3. Noncompliance. If the building official determines that the applicant has not made a good faith effort to comply with this chapter, or if the applicant fails to submit the documentation, then, at the building official's discretion, (a) the certificate of occupancy will not be issued, or (b) the performance security shall be forfeited to the city, or (c) both.

4. Use of Forfeited Security. Forfeited performance securities shall be deposited into a special account and used for the purposes of (a) payment of any fines which may be assessed against the city, and (b) promoting diversion and recycling within the city. (Ord. 1660 § 1, 2002)

## 15.70.080 Performance security.

A. Requirement. The applicant for any regulated project with a total project value greater than or equal to \$1,000,000 or more shall submit performance security before the issuance of a building or demolition permit. For a residential project, performance security shall be submitted for each phase.

B. Amount of Security.

1. Construction Projects. The applicant for any regulated construction project (under LMC 15.70.030) with a total project value of \$1,000,000 or more shall submit performance security of one percent of the project value, not to exceed security of \$100,000.

When a regulated project is being constructed in phases, the compliance officer has the discretion to allow separate performance security for each separate phase, in proportion to the value of that phase.

2. Demolition Projects. The applicant for any regulated demolition project (under LMC 15.70.030) shall submit performance security of \$10,000 plus one percent of the project value, not to exceed security of \$100,000.

C. Form of Security. The performance security may be a performance bond, surety bond, money order, letter of credit, certificate of deposit, cash, or alternate security approved by the city attorney. (Ord. 1660 § 1, 2002)

## 15.70.090 Exemption.

A. Application. If an applicant for a regulated project experiences unique circumstances that the applicant believes make it infeasible to comply with the diversion requirement, the applicant may apply for an exemption at the time that he or she submits the WMP required under LMC 15.70.050. The applicant shall indicate on the WMP the maximum rate of diversion he or she believes is feasible for each material and the specific circumstances that he or she believes make it infeasible to comply with the diversion requirement.

B. Meeting with Building Official. The building official shall review the information supplied by the applicant and may meet with the applicant to discuss possible ways of meeting the diversion requirement. The building official may request that staff from the Alameda County waste management authority attend this meeting or may require the applicant to request a separate meeting with Alameda County waste management authority

staff. Based on the information supplied by the applicant and, if applicable, Alameda County waste management authority staff, the building official shall determine whether it is possible for the applicant to meet the diversion requirement.

C. Granting of Exemption. If the building official determines that it is infeasible for the applicant to meet the diversion requirement due to unique circumstances, he or she shall determine the maximum feasible diversion rate for each material and shall indicate this rate on the WMP submitted by the applicant. The building official shall return a copy of the WMP to the applicant marked "Approved with Exemption" and shall place a copy of the approved-with-exemption WMP in the building department project file.

D. Denial of Exemption. If the building official determines that it is possible for the applicant to meet the diversion requirement, he or she shall so inform the applicant in writing. The applicant shall have 30 days to resubmit a WMP. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with this chapter, the building official shall deny the WMP in accordance with LMC 15.70.060(B). (Ord. 1660 § 1, 2002)

#### **15.70.100 Appeal.**

An applicant may appeal a determination made under this chapter to the city council. To appeal, the applicant shall file a written appeal with the city clerk within 10 days after the determination of the building official, stating the reasons for the appeal. An appeal is limited to the following issues: (1) the granting or denial of an exemption; (2) whether the applicant has made a good faith effort to comply with the WMP; and (3) the amount of security to be released. The city council shall hear the appeal within 30 calendar days, and shall give 10 days' prior written notice to the applicant. (Ord. 1660 § 1, 2002)

#### **15.70.110 Enforcement.**

A. Civil Action. Violation of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the city shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

B. Infraction. A violation of this chapter constitutes an infraction punishable as set forth in Chapter 1.16 LMC. Where the violation is the failure to achieve the diversion requirement and the construction and demolition materials from the project have already been placed in a landfill, the violation shall be deemed to have ceased after a period of 10 days.

C. Public Nuisance. A violation of this chapter is a public nuisance under LMC 1.16.030.

D. Authority to Enforce. The community development director and the city attorney are authorized to enforce this chapter. (Ord. 1660 § 1, 2002)