

# ORDINANCE NO. 667 N.S.

## AN ORDINANCE ADDING ARTICLE III TO CHAPTER 9 OF THE PIEDMONT MUNICIPAL CODE REGARDING RECYCLING OF CONSTRUCTION AND DEMOLITION DEBRIS

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The City of Piedmont does hereby ordain:

### SECTION 1.

It is the intent of the City Council of the City of Piedmont in adopting this ordinance to protect public health and safety and the environment and to meet its obligations under California law as embodied in the California Waste Management Act of 1989, Assembly Bill 939 (AB 939) and the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D), by promoting recycling of solid waste caused by construction and demolition projects.

### SECTION 2.

Article III is added to Chapter 9 as follows:

#### Article III

#### **RECYCLING AND DIVERSION OF DEBRIS FROM CONSTRUCTION AND DEMOLITION.**

Sections:

- 9.18 Findings and Purpose
- 9.19 Definitions
- 9.20 Threshold For Covered Projects
- 9.21 Recyclable C&D Materials Incentive Program
- 9.22 Franchised Waste Hauler Responsibilities
- 9.23 Compliance Requirements
- 9.24 Infeasible Exemption
- 9.25 Appeal
- 9.26 Enforcement
- 9.27 Monitoring

#### SEC. 9.18 FINDINGS AND PURPOSE

The City finds and determines that it is committed to protecting the public health, safety, welfare and environment; that in order to meet these goals it is necessary that the City promote the reduction of solid waste and reduce the stream of solid waste going to landfills; that under California law as embodied in the California Waste Management Act of 1989, Assembly Bill 939 (AB 939), Piedmont is required to prepare, adopt and implement source reduction and recycling elements to reach, maintain or exceed a minimum diversion rate of 50% of discarded materials (base year 1990, state methodology), under threat of penalties of up to \$10,000 per day; that 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 landfilled of materials generated in Alameda County by 75% by the year 2010; that debris from demolition and construction of buildings represents a large portion of the volume presently coming from Piedmont, and that much of said debris is particularly suitable for recycling; that reusing and recycling construction and demolition debris is essential to further the City's efforts to reduce waste and comply with AB 939 and Measure D goals; that construction and demolition debris waste reduction and recycling have been proven to reduce the amount of such material which is landfilled, increase site and worker safety, and be cost effective; and that, except in unusual circumstances, it is feasible to divert an average of at least fifty (50) percent of all C&D debris from construction, demolition, and renovation projects.

SEC. 9.19      DEFINITIONS

For the purposes of this Article III of Chapter 9, the following words and definitions shall have the meanings listed:

9.19.1: Applicant. “Applicant” means the person or entity or the authorized representative of a person or entity who submits an application for any approval for a permit to undertake any construction, demolition, or renovation project with the City. An applicant need not possess legal title to the subject property, so long as the applicant has secured the written consent of the property owner and a copy of that consent is submitted with the application.

9.19.2: Approved Recycling Materials. “Approved Recycling Materials” means the materials approved for recycling as specified on the City of Piedmont Table of Typical Materials Generated by Residential Construction Projects.

9.19.3: Building Official. “Building Official” means the designated staff person authorized and responsible for implementing this Article.

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

9.19.5: Construction and Demolition Debris. “Construction and Demolition Debris”, “C&D Debris”, or “Construction Debris” means used or discarded materials removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair, or demolition operations on any pavement, house, commercial building, or other structure.

9.19.6: Conversion Rate. “Conversion Rate” means the rate set forth in the standardized Conversion Rate Table approved by the City pursuant to this Article for use in estimating the volume or weight of materials identified in a Waste Management Plan.

9.19.7: Covered Project. “Covered Project” shall have the meaning set forth in Section 9.20.1 of this Article.

9.19.8: Deconstruction. “Deconstruction” means the taking apart or removal of any facility, structure or building, whether in whole or in part, whether interior or exterior, such that as many individual elements as possible are retained for future use by the applicant or others. Examples of elements that can be salvaged and reused include, but are not limited to, windows, doors, architectural moldings, bath and kitchen fixtures (sinks, etc.), decorative medallions, fireplace surrounds, and decorative ironwork.

9.19.9: Demolition. “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.

9.19.10: Divert. “Divert” means to use material for any purpose other than disposal in a landfill or transformation facility.

9.19.11: Diversion Goal. “Diversion Goal” means the diversion of at least fifty percent (50%) of the total Construction and Demolition Debris generated by a Project via reuse or recycling, unless an Applicant of a Covered Project has been granted an Infeasible Exemption pursuant to this Ordinance, in which case the Diversion Goal shall be the maximum feasible diversion rate established by the Building Official for the Project.

9.19.12: Franchised Waste Hauler. “Franchised Waste Hauler or Franchised Hauler” is the company that has an exclusive franchise with the City of Piedmont for the removal of solid waste, and recycling from properties within the City.

9.19.13: Noncovered Project. “Noncovered Project” shall have the meaning set forth in Section 9.20.2 of this Article.

9.19.14: Project. “Project” means any activity involving construction, demolition, or renovation, and which requires issuance of a building permit from the City.

9.19.15: Recycling. “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.

9.19.16: Renovation. “Renovation” means any change, addition, or modification in an existing structure.

9.19.17: Reuse. “Reuse” means further or repeated use of Construction or Demolition Debris.

9.19.18: Salvage. “Salvage” means the controlled removal of Construction or Demolition Debris from a permitted building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

## SEC. 9.20 THRESHOLD FOR COVERED PROJECTS

9.20.1: Covered Projects. The provisions of this Chapter shall apply to all construction, demolition and/or renovation projects within the City with a building permit valuation greater than or equal to \$50,000 as such valuation is determined by the City’s Building Official. Additionally, the City Council and Planning Commission, at their discretion, may require compliance with this Chapter as a condition of project approval. The total cost established by this section may be adjusted by the City Council from time to time to reflect an increase or decrease in the cost of construction due to inflation or deflation. No fee shall be required by the City to implement and monitor covered projects who comply with the provisions of this Chapter.

9.20.2: Noncovered Projects. Applicants that do not meet the valuation threshold requirement set forth in Section 9.20.1 shall be encouraged to meet or exceed the thresholds set forth in this Chapter. No fee shall be required by the City to implement and monitor noncovered projects who comply with the provisions of this Chapter.

9.20.3: Compliance as a Condition of Approval. Unless otherwise required as a condition of project approval by the City Council or Planning Commission, compliance with the provisions of this Chapter shall be listed as a condition of approval on all building permits issued for a Covered Project. Failure to include such a condition shall not relieve the Project Applicant from complying with this Chapter.

## SEC. 9.21 RECYCLABLE C&D MATERIALS INCENTIVE PROGRAM

9.21.1: Provisions of Incentive Program. As a means of ensuring the recycling of as much material resulting from construction and demolition projects as possible, the City will provide one-half the cost of debris boxes used exclusively for the purpose of mixed C&D materials removed from the construction site by the City’s franchised waste hauler. This incentive is available to Covered Projects and Non-Covered Projects who wish to voluntarily participate. Verification by the City’s franchised waste hauler that the debris box was used exclusively for the purpose of collecting only materials on the List of Eligible Materials for C&D Recycling will be required.

9.21.2: Funding of Incentive Program. Limited grant funding has been obtained from the Alameda County Stopwaste.org Import Mitigation Fund for this program.

9.21.3: Expiration of Incentive Program Funding. This incentive is available on a first-come, first-served basis under this Chapter until the fund is depleted. No Covered or Non-Covered Project will be eligible for incentive funding of any kind once the Import Mitigation Fund money for this program is depleted. This is a one-time program that will expire upon depletion of the fund for this purpose.

## SEC. 9.22 FRANCHISED WASTE HAULER RESPONSIBILITIES

9.22.1: Exclusive Debris Box Service. The City Council has by separate action authorized a single franchised waste hauler to provide debris boxes within the City limits. All debris boxes removed from the City by the franchised waste hauler shall be disposed at an approved disposal facility. The franchised hauler will work with Applicants of Covered Projects to ensure at least a 50% diversion rate for general disposal of construction and demolition waste. The Franchised Hauler will verify that mixed C&D debris boxes requested by Covered Projects or Non-Covered Projects who voluntarily wish to participate in the Incentive Program under Section 9.21, are used exclusively for recycled materials.

9.22.2: Weighing of Wastes. The Franchised Waste Hauler shall make reasonable efforts to ensure that all C&D debris diverted or landfilled are measured and recorded using the most accurate method of measurement available. To the extent practical, all C&D debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D 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 to weight, the Franchised Waste Hauler shall use the standardized Conversion Rates approved by the City for this purpose.

9.22.3: Documentation of Recycled C&D Materials Debris Box Service and Billing. The Franchised Hauler will provide a monthly accounting by project address of all mixed C&D debris boxes serviced during the month that were used exclusively for the purposes of recycling materials included on the List of Eligible Materials for C&D Recycling. The Franchised Hauler will submit a bill to each Applicant of a Covered or Non-Covered Project for one-half of the cost of mixed C&D debris boxes serviced pursuant to the incentive program defined in Section 9.21. The Franchised Hauler will submit a bill to the City for one-half the cost of mixed C&D debris boxes serviced pursuant to the incentive program defined in Section 9.21. The bill shall be submitted at the same time as the monthly accounting.

## SEC. 9.23 COMPLIANCE REQUIREMENTS

9.23.1: Applicability. The provisions of the Chapter shall apply to all Covered Projects as defined by Section 19.20.1.

9.23.2: Deconstruction. Applicants of Covered Projects for building permits 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 prior to landfilling. Prior to the issuance of a Final Inspection Permit, the Applicant shall submit a Salvaged Materials form that itemizes the materials salvaged, with an estimate of the weight and number of items, accompanied with receipts or weight tags from the salvage operation.

9.23.3: Documentation of Salvaged Materials. Applicants shall make reasonable efforts to ensure that all materials salvaged are measured and recorded using the most accurate method of measurement available. To the extent practical, salvaged materials shall either be weighed by measurement on scales in compliance with all regulatory requirements for accuracy and maintenance, or for salvaged material for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the Applicant shall use the standardized Conversion Rates approved by the City for this purpose. For salvaged materials or items that were donated or sold for reuse, an itemized list of such items specifying the weight, size and number of items shall be provided prior to the Final Building Permit Inspection, accompanied by receipts from the charitable organization or salvage operation receiving the items.

9.23.4: Determination of Compliance. Prior to the issuance of a Final Inspection, the Building Official shall review the information submitted by the City’s franchised waste hauler pursuant to Section 9.22 of this Code and determine whether the Applicant of a Covered Project has complied with the Diversion Goal, as follows:

(a) Full Compliance. The applicant shall be in full compliance if at least fifty percent (50%) by weight of the total C&D debris generated by the Covered Project is diverted, and appropriate documentation as outlined in Sections 9.22, 9.23.2 and 9.23.3 is provided.

(b) Good Faith Effort to Comply. When the Building Official determines that the Applicant of a Covered Project has not achieved full compliance, he or she shall determine on a case-by-case basis whether the Applicant has made a good faith effort to comply with Article III of Chapter 9. In making this determination, the Building Official may consider information submitted by the Applicant, the availability of markets for the C&D debris that was not diverted, the size and type of the Project, the documented efforts of the Applicant to divert C&D debris, and barriers encountered.

(c) Noncompliance. The Building Official shall determine the Covered Project to have a noncompliance status if he or she determines that the Applicant has not made a good faith effort to comply with Article III of Chapter 9, or if the Applicant fails to submit the documentation required by Sections 9.22, 9.23.2 and 9.23.3 of this Code. For any Covered Project with a status of noncompliance the building permit shall not be issued a Final Inspection Approval. Further actions pursuant to the Enforcement Action section of this Chapter will be pursued.

9.23.5: Emergency Demolition. Compliance with this code is not required where the Building Official has made a determination that immediate demolition is required to protect the public health and safety from imminent peril.

SEC. 9.24            INFEASIBILITY EXEMPTION

9.24.1: Application. If an Applicant for a Covered Project experiences unique circumstances that the Applicant believes make it infeasible to comply with the Diversion Goal, the Applicant may apply for an exemption to the Building Official. The Applicant shall indicate in writing, 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 Goal.

9.24.2: Meeting with the 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 Goal. Upon request of the jurisdiction, 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 Goal.

9.24.3: Granting of Exemption. If the Building Official determines that it is infeasible for the Applicant to meet the Diversion Goal due to unique circumstances, he or she shall determine the maximum feasible diversion rate for each material and shall indicate this rate in a letter to the Applicant marked “Approved for Infeasible Exemption” and shall place a copy of the letter in the house file and any other applicable project files.

9.24.4: Denial of Exemption. If the Building Official determines that it is possible for the Applicant to meet the Diversion Goal, he or she shall so inform the Applicant in writing. The Applicant shall have 30 days to submit documentation of full compliance with this Code. If the Applicant fails to submit documentation of full compliance, the Building Official shall begin enforcement actions pursuant to Section 9.29 of this Code.

SEC. 9.25      APPEAL

An applicant may appeal a determination under this chapter by initiating the following procedure:

- (1) Within ten calendar days after the date of the written decision, an appeal must be filed in writing with the City Clerk's office. The appeal shall state specifically the error, abuse of discretion or claim where the decision of the Building Official was not supported by substantial evidence in the record.
- (2) Within ten working days of the receipt of the appeal, the City Clerk shall set the hearing date for consideration by City Council and give written notice to the applicant and/or appellant.
- (3) The decision of the City Council shall be final.

SEC 9.26      ENFORCEMENT

9.26.1: Enforcement Authority. The Director of Public Works, or the Director's designee, shall have the authority to enforce the provisions of this chapter. This authority shall be in addition to the authority granted to police officers.

9.26.2: Rules and Regulations. The Director of Public Works, or the Director's designee, shall have the power to establish rules and regulations consistent with the provisions of this chapter, such rules and regulations to have as their purpose the enforcement of the provisions of this chapter and the health and sanitary laws and ordinances of the City. Such rules and regulations shall have the effect of law.

9.26.3: Mandatory Solid Waste Requirements. The Director of Public Works, or the Director's designee, may require the owner of a residential or commercial premises or the generator of solid waste at such premises to subscribe to and pay for solid waste collection services in such configuration as the Director determines is necessary for the preservation of the public health and/or public safety. Such requirements may include, but are not limited to, requiring solid waste containers in such sizes and numbers as needed to store all the solid waste generated at the premises during the periods between collections, requiring the owner or generation to change the frequency of solid waste collections at the premises, and requiring a change from commercial to residential collection service.

9.26.4: Inspection. The Building Official may inspect and monitor all Covered Projects to determine levels of actual diversion activities and validate the information provided by the Applicant to determine compliance.

9.26.5: Non-Compliance. When the Building Official determines that a Covered Project did not comply with the provisions of this Chapter pursuant to Section xx.xx of this Chapter, the City will begin enforcement actions provided under Article II of Chapter 1 of the Municipal Code, including possible imposition of administrative penalties and fines.

SEC. 9.27      MONITORING

This Chapter shall be monitored for effectiveness in promoting construction and demolition material recycling and reuse. Reporting to the City's Building Official by the City's Franchised Waste Hauler will include an analysis of construction and demolition material recycling quantities and opportunities to increase service area coverage and recycling rates. An annual report shall be provided to the City's Building Official by the Franchised Waste Hauler.

SECTION 3.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of Article III of Chapter 9, or

any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of Article III of Chapter 9 or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of Article III of Chapter 9 irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provision of this Chapter are declared to be severable.

SECTION 4.

This ordinance shall be effective thirty days after the second reading by the City Council, and shall terminate upon the implementation of a new franchise agreement with a waste hauling franchisee.

SECTION 5.

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after the second reading.