

SECTION 12-11 CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING**12-11.1 Purpose.**

This Article is adopted in order to supplement the provisions of the California Integrated Waste Management Act of 1989 which requires that each local jurisdiction in the state Divert 50% of discarded materials from landfills and aid in compliance with the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D). These requirements shall apply to affected projects as specified in this chapter.

12-11.2 Definitions (A-Z).

As used in this section:

Applicant. Any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the City for the applicable permits to undertake any construction, demolition, or renovation project within the City.

Building Official. The designated staff person(s) authorized and responsible for implementing this Chapter.

Construction. The building of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure. Construction refers to SIC Codes 1521 through 1794, 1796, and 1799.

Construction and Demolition Debris. Discarded materials, packaging, and rubble resulting from Construction, Renovation or Demolition operations on any pavements, houses, commercial buildings, or other structures.

Conversion Rate. 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 Debris Recycling Statement.

Covered Project. Shall have the meaning set forth in Section 12-11.3.A. of this Chapter.

Debris Recycling Statement. A form completed and approved pursuant to Section 12-11.4 of this Chapter, submitted by the Applicant for any Covered or Noncovered Project.

Demolition. 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. Demolition refers to SIC Code 1795.

Divert. To use material for any purpose other than disposal in a landfill.

Diversions Requirement. The diversion of one-hundred (100) percent of the asphalt, concrete and similar material and at least 50%, by weight, of all other Construction and Demolition Debris generated by the Project, unless the Applicant has been granted an

Infeasibility Exemption pursuant to Section 12-11.4.E.5. of this Chapter, in which case the Diversion Requirement shall be the diversion of one-hundred (100) percent of the asphalt, concrete and similar material and the maximum feasible diversion of all other Construction and Demolition Debris generated by the Project, as established by the Building Official for the Project.

Franchise Agreement. The agreement between the City and its contractor pursuant to California Public Resources Code section 40059(a) for solid waste, recyclable materials and organic materials services.

Hearing Officer. Shall have the meaning set forth in 12-11.6 of this Chapter.

Noncovered Project. Shall have the meaning set forth in 12-11.3.B of this Chapter.

Performance Security. Any performance bond, surety bond, cashier's check, letter of credit, or certificate of deposit submitted to the City pursuant to Section 12-11.4.D of this Chapter.

Project. Any activity which requires an application for a building permit and/or a Demolition permit or any similar permit from the City.

Recycling. The process of collecting, delivering, 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.

Renovation. Any change, addition, or modification in an existing structure.

Reuse. Further or repeated use of Construction or Demolition Debris.

Salvage. 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.

Summary Report. A form completed pursuant to Section 12-11.5.B of this Chapter, summarizing the Diversion of Construction and Demolition Debris generated by a Covered Project.

12-11.3 Diversion of Construction and Demolition Debris

a. Thresholds for Covered Projects. The provisions of this chapter shall apply to all Construction, Demolition and/or Renovation Projects within the City with a permit valuation in excess of \$75,000 as determined by the City's Building Official or designee. The \$75,000 threshold shall be calculated as the total or projected costs of Construction, Demolition and/or Renovation. Notwithstanding the foregoing, Covered Projects shall include any Project involving only Demolition with a permit valuation in excess of \$25,000.

b. **Non-Covered Projects.** Applicants for Projects that do not meet the valuation threshold requirement set forth in Section 12-11.3.A shall be encouraged to meet the Diversion Requirement standards set forth in this chapter.

c. **Compliance as a Condition of Approval.** Compliance with the provisions of this chapter shall be included as a condition of approval on all building and/or Demolition permits issued for Covered Projects. The City has entered into an exclusive Franchise Agreement, which provides Construction and Demolition Debris collection services for residential and commercial customers. Applicants may comply with this chapter in one of two ways:

1. Applicants may use the Construction and Demolition Debris collection services of the City's contractor. As provided in the Franchise Agreement, the City's contractor must provide Construction and Demolition Debris collection upon the request of residential and commercial customers; or

2. Applicants may elect to not use the City's Contractor if they meet one of the exceptions to the exclusivity of the Franchise Agreement with regard to Construction and Demolition Debris for:

- (a) Commodities;
- (b) Materials hauled by owner or occupant, or its contractor; or
- (c) Donated materials.

12-11.4 Debris Recycling Statements

a. **Submission of Debris Recycling Statements.** Applicants for building and/or Demolition permits involving Covered Projects shall complete and submit a Debris Recycling Statement (DRS) on a form provided by the City. The completed DRS form shall indicate whether or not the Applicant intends to use the City's contractor for its Construction and Demolition Debris collection services.

b. **Selection of City's Contractor.** If the Applicant's DRS form indicates that the City's contractor will provide Construction and Demolition Debris collection services, either because the Applicant does not fall within one of the exceptions to the exclusive franchise or because the Applicant falls within such an exception but chooses to have its Construction and Demolition Debris collected by the City's contractor, the Applicant shall make arrangements directly with the City's contractor for the collection of Construction and Demolition Debris. Once the Applicant contacts the City's contractor for Construction and Demolition Debris collection services and makes a good faith effort to provide Construction and Demolition Debris for collection by the City's contractor, the Applicant will be deemed to have complied with this Chapter so long as the Applicant submits a Summary Report pursuant to Section 12-11.5 of this Chapter.

c. **Election to Not Use the City's Contractor.** Applicants that indicate on their DRS form that they will not use the City's contractor for Construction and Demolition Debris collection must include and indicate all of the following on the completed DRS form:

1. The specific exception of the Franchise Agreement under which the Applicant may refuse Construction and Demolition Services by the City's contractor;
2. The estimated volume or weight of the Construction and Demolition Debris, by type of material generated;
3. The estimated volume or weight of materials, by material type, that can feasibly be Diverted via reuse or recycling;
4. The vendor or facility that the Applicant proposes to use to collect and/or receive the Diverted material; and,
5. The estimated volume or weight of materials that will be deposited in a landfill.

For the purposes of this section, the Applicant shall use standardized Conversion Rates, approved by the City, to estimate the volume and weight of materials identified in the DRS. Applicants that elect not to use the City's contractor may not rely on one of the above-described exceptions for waste generated by human activity other than Construction and Demolition. Applicant shall arrange for the collection of such waste on a weekly basis by the City's contractor.

d. Performance Security. Applicants for all Covered Projects that have elected not to use the City's contractor shall submit a Performance Security with the DRS. The amount of the Performance Security shall be calculated as the lesser of three (3) percent of total Project cost or \$10,000. Acceptable forms of Performance Security include the following: performance bonds; surety bonds; cashier's checks; letters of credit drawn on an established California bank; and certificates of deposit. The City's Building Official may waive the Performance Security if the total security required pursuant to this Section would be fifty (50) dollars or less.

e. Review of Debris Recycling Statements

1. **Timeframe for Review.** The Building Official will review the DRS and advise the applicant within five (5) working days of receipt of the DRS of the decision regarding approval or non-approval.

2. **Approval of Debris Recycling Statement.** No building, demolition or similar permit shall be issued unless and until the Building Official has approved the DRS for the project. A DRS shall only be approved if the Building Official determines that the following conditions have been met:

- (a) The DRS provides all of the information required by this Chapter; and,
- (b) The DRS form indicates that the Applicant elects to use the services of the City's contractor for Construction and Demolition Debris collection; or

(c) The DRS form indicates that the Applicant elects not to use the City's contractor; and

1. The Applicant has submitted an appropriate Performance Security in compliance with this Section ; and

2. The DRS indicates that 100% of the asphalt, concrete and similar material, and at least 50%, by weight, of all other Construction and Demolition Debris generated by the Project as a whole will be Diverted; or

3. The DRS indicates that 100% of the asphalt, concrete and similar material will be Diverted, and has obtained an exemption pursuant to Section (d) below; or

4. The DRS indicates that the Project will generate a negligible amount of Construction and Demolition Debris. The determination of whether the Project will generate a negligible amount of Construction and Demolition Debris shall be at the discretion of the Building Official.

If the Building Official determines that the Applicant has met the conditions set forth above, the DRS shall be marked "Approved". A copy of the approved DRS shall be returned to the Applicant.

3. **Non-approval of Debris Recycling Statement.** If the Building Official determines that the Applicant has failed to meet one or more of the conditions set forth above, the DRS will be returned to the Applicant requesting full documentation of the reasons that the requirements of this Chapter cannot be met, or returned to the Applicant marked "Denied". If the DRS is returned marked "Denied", it shall be accompanied by a statement of reasons for denial. No building permit shall be issued for a project until the submitted DRS has been approved by the Building Official.

4. **Emergency Demolition.** No DRS is required where an authorized official of the City has made a determination that immediate Demolition is required to protect the public health or safety from imminent peril.

5. **Infeasibility Exception.**

(a) Application of this Section: This Section 12-11.4.E. applies only to Applicants for Covered Projects that have elected not to use the City's contractor.

(b) DRS Form: If an Applicant 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 DRS required under Section 12-11.4. The Applicant shall indicate on the DRS the maximum rate of diversion and/or quantity of material 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.

(c) **Meeting with Building Official:** The City 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. Upon request of the City, the Building Official may request that staff from the Alameda County Waste Management Authority attend this meeting. 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.

(d) **Granting of Exemption:** If the Building Official determines that it is infeasible for the Applicant to meet the Diversion Requirement due to unique circumstances, the Building Official shall determine the maximum feasible diversion rate for each material and shall indicate this rate on the DRS submitted by the Applicant. The Building Official shall return a copy of the DRS to the Applicant marked "Approved for Infeasibility Exemption" and shall notify the Building Department that the DRS has been approved.

(e) **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 DRS form in full compliance with Section 12-11.4 of this Chapter. If the Applicant fails to resubmit the DRS, or if the resubmitted DRS does not comply with Section 20.64.040 of the Albany Municipal Code, the Building Official shall deny the DRS in accordance with Section 20.64.040.E. of the Albany Municipal Code.

12-11.5 Compliance

a. Weighing of Construction and Demolition Debris. Applicants electing not to use the City's contractor shall make every reasonable effort to assure that all Construction and Demolition Debris Diverted and/or deposited in a landfill is measured and recorded using the most accurate method of measurement available. To the extent possible, 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. A volumetric measurement shall be used for all Construction and Demolition Debris for which weighing is not practical due to small size or other considerations. Volumetric measurements shall be converted to weight by using the Conversion Rates approved by the City for this purpose.

b. Determination of Compliance. Within 30 days after the completion of any Covered Project, the Applicant shall complete and submit a Summary Report on a form provided by the City. Applicants may demonstrate compliance with this Chapter in one of two ways:

1. Applicants may demonstrate compliance by submitting a Summary Report indicating that it used the services of the City's contractor for Construction and Demolition Debris collection; or

2. Applicants that did not use the City's contractor for Construction and Demolition Debris collection shall so indicate on the Summary Report and include supporting documentation such as receipts and weight tags for Construction and

Demolition Debris generated by the Covered Project. The Building Official shall review the Summary Report and its supporting documentation to determine whether the Applicant has achieved the Diversion Requirement. Such determination shall be based upon the requirements of this Chapter and the following guidelines:

(a) **Full Compliance:** The Applicant shall be found to have fully complied with this Chapter if the Building Official determines that the Applicant has complied with the Diversion Requirement applicable to the Project. If the Building Official determines that the Applicant has fully complied with the Diversion Requirement applicable to the Project, he or she shall cause the full amount of the Performance Security to be released to the Applicant.

(b) **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, consideration may be given to information submitted by the Applicant, including but not limited to the availability of markets for the Construction and Demolition Debris that was not Diverted, the size and nature of the Project, and the documented efforts of Applicant to Divert Construction and Demolition Debris and the barriers encountered. If the Building Official determines that the Applicant has made a good faith effort to comply with the Diversion Requirement and documentation provisions herein above set forth, he or she shall release the Performance Security, or a portion thereof, to the Applicant. Any portion of the Performance Security not released to the Applicant shall be forfeited to the City, and shall be used for the purposes of promoting Recycling within the City.

(c) **Noncompliance:** If the Building Official determines that (1) the Diversion Requirement applicable to a Covered Project has not been achieved; (2) the Applicant has failed to submit the documentation required by this Chapter within the required time period; or (3) that a good faith effort was not made, then the Applicant shall be in "Non Attainment" status and the Performance Security shall be forfeited to the City. All forfeited Performance Securities shall be used for the purposes of promoting Recycling within the City.

c. Right to Monitor and Inspect. The City shall have the right to inspect all Covered Projects subject to this Chapter to determine levels of actual Diversion activities and validate the information contained in the DRS and Summary Report. Upon request by the City, an Applicant electing not to use the City's contractor shall provide documentation, papers and records relating to the disposal of Construction and Demolition Debris for an affected Project.

d. Supporting Documentation. Applicants for all Covered Projects that have elected not to use the City's Contractor shall retain receipts and weight tags for the quantities of materials Reused, Salvaged, Recycled and deposited in a landfill as indicated in the Summary Report for a period of one year following the final inspection and issuance of a temporary or final certificate of occupancy. Applicant shall make such records available to the City for inspection and copying upon request.

e. **Targeted Materials.** In furtherance of the goals established by this Chapter, the Community Development Director shall establish a list of materials that could potentially be Reused, Recycled or Salvaged, and may amend the list based upon local markets and conditions, the economic feasibility of compliance and the availability of local recycling facilities.

12-11.6 **Appeals.**

Any Applicant affected by any decision, action or determination made by the Building Official regarding this Section may file with the City Clerk a written appeal within ten (10) days of such decision, action or determination, setting forth in detail the facts supporting the Applicant's appeal. The City Administrator shall appoint a Hearing Officer who shall hear the appeal within thirty (30) days from the date of filing. The Hearing Officer shall render a written decision within fourteen (14) days of the close of the hearing. The Hearing Officer's determination shall be final.

12-11.7 **Enforcement.**

Notwithstanding any other provision of this Chapter, violations of this Chapter may be enforced in the following manner: (1) Pursuant to Chapter 1 of this Code; (2) by a stop work order issued by the Building Official where work on the Project has already commenced; or (3) in any other manner provided by law.