

## ORDINANCE NO. 7,156–N.S.

AMENDING CHAPTER 19.24 OF THE BERKELEY MUNICIPAL CODE,  
CONSTRUCTION AND DEMOLITION DEBRIS SALVAGE AND RECYCLING

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 19.24.010 is amended to read as follows:

**19.24.010 Findings.**

A. The State of California Building Standards Commission published the 2010 California Green Building Standards Code (CALGreen) effective January 1, 2011. The CALGreen Code will require construction waste reduction of at least 50% for all new residential construction of three stories or less and 100% of land clearing debris and excavated soil in addition to the 50% construction waste reduction for new non-residential construction.

B. The State of California through its California Waste Management Act of 1989, Assembly Bill 939 (AB 939), required that each local jurisdiction in the state divert 50% of discarded materials (base year 1990, state methodology) from landfill by December 31, 2000 and thereafter maintain or exceed that diversion rate, or face fines of up to \$10,000 per day.

C. 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 land-filled of materials generated in Alameda County by 75% by the year 2010.

D. In 2005 the City adopted a Zero-Waste Resolution No. 62,849- N.S. with a goal of achieving Zero Waste by 2020. The concept Zero Waste prioritizes the highest and best use of materials, favoring reuse over recycling and recycling over landfilling, and stipulates that the producer of waste is responsible for its diversion.

E. Construction and Demolition (C&D) debris constituted approximately 20 percent of the materials landfilled in Alameda County and 15 percent of the waste stream in the City. These materials have significant potential for waste reduction, recycling and salvage.

F. Salvage and recycling of C&D debris is essential to further the City's Zero Waste Goal and comply with AB 939 and Measure D.

G. Except in unusual circumstances, it is feasible to divert an average of one hundred (100) percent of concrete and asphalt and fifty (50) percent of remaining C&D debris from construction, demolition, and renovation projects through salvage for reuse and recycling.

H. Compliance with the provisions of this Chapter shall be required prior to the issuance of a building or demolition permit for a Covered Project. To ensure compliance with this Chapter and to ensure that applicants that comply with this Chapter are not placed at a competitive disadvantage, it is necessary to impose civil penalties for noncompliance. (Ord. 6957-NS § 1 (part), 2006)

Section 2. That Berkeley Municipal Code Section 19.24.020 is amended to read as follows:

**19.24.020 Purpose.**

The purpose of the Construction and Demolition Debris Salvage and Recycling Ordinance is to reduce the amount of waste generated in the City that is going to landfills, in order to help the City comply with AB 939 and Measure D and meet its Zero Waste goals, to align with the requirements of the CALGreen Code and to encourage the highest and best use of construction site materials. (Ord. 6957-NS § 1 (part), 2006)

Section 3. That Berkeley Municipal Code Section 19.24.030 is amended to read as follows:

**19.24.030 Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

A. "Applicant" means 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.

B. "Composting" means soil amendment created by the decomposition of organic matter such as yard and wood waste. Generally materials such as clean wood chips, shavings and clean dry wall can be composted at large scale facilities.

C. "Construction" means the building of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.

D. "Construction and Demolition 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.

E. "Covered Project" means:

1. Construction of any new building; and
2. Any building renovation and/or addition with total project costs that are, or are projected to be, over \$100,000 in 2010 dollars (adjusted for inflation); and
3. Demolition projects with total costs that are, or are projected to be, over \$3,000 in 2010 dollars (adjusted for inflation).

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

G. "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.

H. "Divert" means to use material for any purpose other than disposal in a landfill or transformation facility. Uses may include reuse, recycling or composting.

I. "Diversion Requirement" means the percentage of concrete and asphalt , Construction and Demolition Debris or Excavated Soil and Land Clearing Debris generated by a Project. and required to be diverted pursuant to Section 19.24.040 of this Chapter, unless the Applicant has been granted a diversion requirement adjustment,

pursuant to Section 19.24.060 of this Chapter, in which case the Diversion Requirement shall be the maximum feasible diversion rate for the project established by the Official.

J. "Excavated Soil and Land Clearing Debris" means trees, stumps, rocks, associated vegetation and soils resulting primarily from land clearing.

K. "Exempt Project" means any demolition project undertaken because the City or other public agency has determined that the demolition is necessary to protect public health and safety.

L. "Project" means any activity involving construction, demolition or renovation and which requires issuance of a permit from the City.

M. "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.

N. "Renovation" means any change, addition, or modification in an existing structure.

O. "Reuse" means the use in the same or similar form as it was produced, of a material that might otherwise be discarded.

P. "Official" means the Building Official.

Q. "Salvageable Materials" means materials that can be recovered for reuse.

R. "Waste Diversion Plan" means a completed WDP form, approved by the Official for the purpose of compliance with this chapter, submitted by the Applicant for any Covered Project.

S. "Waste Diversion Report" means an approved waste diversion form, completed by the owner. The Waste Management Report shall identify the amount of each material generated from the Covered Project, how each material was managed, and the name of each facility or service provider used to manage materials, along with receipts from facility or service provider.

(Ord. 6957-NS § 1 (part), 2006)

Section 4. That Berkeley Municipal Code Section 19.24.040 is amended to read as follows:

#### **19.24.040 Diversion Requirement**

Covered Projects shall be required to divert one hundred percent (100%) of Concrete and Asphalt, one hundred percent(100%) of Excavated Soil and Land Clearing Debris for new construction on previously undeveloped lots, and at least fifty percent (50%) of the remaining Construction and Demolition Debris generated, unless the Applicant has been granted a diversion requirement adjustment pursuant to Section 19.24.060 of this Chapter in which case the Diversion Requirement shall be the maximum feasible diversion rate for the project established by the Official.

Section 5. That Berkeley Municipal Code Section 19.24.060 is amended to read as follows:

#### **19.24.060 Submittal and Approval of Waste Diversion Plan.**

A. Applicants for building or demolition permits involving any Covered Project shall complete and submit a Waste Diversion Plan, on a form approved by the City for this purpose. The completed Waste Diversion Plan shall indicate all of the following:

1. A breakdown of the types of construction and demolition materials anticipated at the site.
2. A description of management methods planned to be used for all types of materials (e.g. reuse, recycling, composting or landfilling).
3. The name of all vendors or facilities that the Applicant proposes to use to collect or receive materials and anticipated recovery rates.
4. An acknowledgement that the owner understands the diversion requirements of this Ordinance.

B. Prior to issuance of a building permit, an Applicant shall submit and obtain approval for a Waste Diversion Plan by the Official.

C. If an owner of a covered project experiences circumstances that makes it infeasible to comply with the diversion requirement, the owner may apply in writing for an adjustment. Increased cost to the owner is generally not a sufficient basis for an adjustment. If the Official determines that is infeasible for the owner to meet the diversion and salvage requirements, the Official may adjust the percent of diversion that is required. The Official shall notify the owner of any decision on applications for adjustments under this Chapter. (Ord. 6957-NS § 1 (part), 2006)

Section 6. That Berkeley Municipal Code Section 19.24.070 is amended to read as follows:

#### **19.24.070 Submittal and Approval of Waste Diversion Report.**

A. Documentation. Upon completion of a Covered Project, with the exception of a project involving additions or renovations to existing single family structures, the Applicant shall submit a Waste Diversion Report documenting that the diversion and salvage requirements have been met. Required documentation shall include all of the following:

1. A completed Waste Diversion Report, signed by the owner, indicating the quantity of each material diverted or disposed, consistent with requirements of subsection B.
2. Receipts from the vendor or facility which collected or received each material showing the actual weight or volume of that material.
3. A copy of the previously approved WDP for the Project adding the actual volume or weight of each material diverted and landfilled.
4. Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this chapter.

B. Weighing of debris. The owner shall make reasonable efforts to ensure that all construction and demolition debris diverted or disposed of are measured and recorded using the most accurate methods practicable. To the extent practicable, all construction and demolition debris shall be weighed using 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. The owner shall convert volumetric measurements to weight using standardized conversion factors approved by the Official for this purpose when possible

C. Determination of Compliance. The Official will review the information submitted under subsection A of this Section to determine whether the Applicant has adequately complied, and will provide a written determination regarding compliance to the owner. (Ord. 6957-NS § 1 (part), 2006)

Section 7. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 26, 2010, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

