

ORDINANCE NO. 131

AN ORDINANCE ADDING CHAPTER 7, ADMINISTRATIVE PROVISIONS FOR  
THE PROCESSING OF CONSTRUCTION AND DEMOLITION DEBRIS,  
SECTIONS 5700 - 5709, UNDER ARTICLE V  
TO THE CASTRO VALLEY SANITARY DISTRICT CODE

The Sanitary Board of the **Castro Valley Sanitary District** does hereby ordain the following:

Section 1.

Effective November 1, 2002, Chapter 7, ADMINISTRATIVE PROVISIONS FOR THE PROCESSING OF CONSTRUCTION AND DEMOLITION DEBRIS, Sections 5700-5709, under Article V, of the Castro Valley Sanitary District Code is hereby added to read as follows:

“Section 5700. Findings.

(a) The District finds that 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.

(b) The District finds that every local jurisdiction, city and county in California, including Castro Valley Sanitary District, faces fines up to \$10,000 a day for not meeting the above mandated goal.

(c) The District finds 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 land-filled of materials generated in Alameda County by 75% by the year 2010.

(d) The District finds that in the 2000 Waste Characterization Study done by the Alameda County Waste Management Authority, Construction and Demolition (C&D) debris constituted approximately 21% of the materials land-filled in Alameda County and a similarly large portion of the waste stream in the District. These materials have significant potential for waste reduction and recycling.

(e) The District finds that reusing and recycling C&D debris is essential to further the District's efforts to reduce waste and comply with AB 939 and Measure D goals.

(f) The District finds that C&D 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.

(g) The District finds 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.

(h) The District finds that, 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.

Section 5701. Definitions. Terms used or referred to herein are defined as follows:

(a) Applicant shall mean 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 Alameda County and/or any other governmental agency having jurisdiction, for the applicable permits to undertake any construction, demolition, or renovation project within the District.

(b) Business shall mean of or pertaining to a commercial establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities. Construction and Demolition contractors shall be considered Business Generators regardless of the zoning of the property where Construction and Demolition is undertaken.

(c) Construction shall mean 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 shall mean 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) Conversion Rate shall mean the rate set forth in the standardized Conversion Rate Table approved by the District pursuant to this Chapter for use in estimating the volume or weight of materials identified in a Waste Management Plan.

(f) Demolition shall mean 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.

(g) Divert shall mean to use material for any purpose other than disposal in a landfill or transformation facility.

(h) Diversion Requirement shall mean the diversion of at least fifty (50) percent of the total Construction and Demolition Debris generated by a Project via reuse or recycling, unless the Applicant has been granted an Infeasibility Exemption pursuant to Section 5707 of this Chapter, in which case the Diversion Requirement shall be the maximum feasible diversion rate established by the Waste Management Plan Compliance Official for the Project.

(i) Fixed Body Vehicle shall mean any wheeled vehicle that does not rely on a Roll-Off or other detachable container to collect, contain and transport material. Dump trucks shall be considered Fixed Body Vehicles.

(j) Large Project shall have the meaning set forth in Section 5702(a) of this Chapter.

(k) Performance Security shall mean any performance bond, surety bond, money order, letter of credit, or certificate of deposit submitted to the District pursuant to Section 5704 of this Chapter.

(l) Project shall mean any activity involving construction, demolition, or renovation, and which requires issuance of a permit from the County of Alameda.

(m) Recycling shall mean 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 shall mean any change, addition, or modification in an existing structure.

(o) Reuse shall mean further or repeated use of Construction or Demolition Debris.

(p) Salvage shall mean 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.

(q) Small Project shall have the meaning set forth in Section 5702(b) of this Chapter.

(r) Waste Management Plan (WMP) shall mean a completed WMP form, approved by the District for the purpose of compliance with this Chapter, submitted by the Applicant for any Large or Small Project.

(s) WMP Compliance Official shall mean the designated staff person(s) authorized and responsible for implementing this Chapter.

#### Section 5702. Project Thresholds.

(a) Large Projects: All construction, demolition, and renovation projects within the District with total or projected costs equal to or greater than \$50,000 ("Large Projects") shall comply with this Chapter. The project threshold shall be indexed and changed each November 1<sup>st</sup> to the adjustment in the National Consumer Price Index Pacific Cities for San Francisco/Oakland/San Jose City Average for the previous fiscal year. Failure to comply with any of the terms of this Chapter shall subject the Project Applicant to the full range of enforcement mechanisms set forth in Section 5709 below.

(b) Small Projects: Applicants for construction, demolition, and renovation projects within the District with total or projected costs of less than \$50,000 shall be required to divert at least fifty (50) percent of all project-related construction and demolition debris. To do so, applicants for small projects may either (1) utilize the services of Waste Management of Alameda County, who, by contract, will take C&D materials to be properly recycled, or (2) choose an alternate designated site for recycling (to be approved by the District) and self hauled, as part of the project or in a fixed body truck, to that site.

(c) District-Sponsored Projects: All District-sponsored construction, demolition, and renovation projects shall be considered "Large Projects" for the purpose of this Chapter and shall submit a WMP to the WMP Compliance Official prior to beginning any construction or demolition activities and shall be subject to all applicable provisions of this Chapter.

(d) Compliance as a Condition of Approval: Compliance with the provisions of this Chapter shall be listed as a condition of approval on any building or demolition permit issued for a Large or Small Project.

#### Section 5703. Submission of Waste Management Plan.

(a) WMP Forms: Applicants for building or demolition permits involving any Large Project shall complete and submit a Waste Management Plan (WMP) to the District, on a WMP form approved by the District for this purpose as part of the application packet for the building or demolition permit. The completed WMP shall indicate all of the following:

(1) the estimated volume or weight of project C&D debris, by materials type,

to be generated;

(2) the maximum volume or weight of such materials that can feasibly be diverted via reuse or recycling;

(3) the vendor or facility that the Applicant proposes to use to collect or receive that material; and

(4) the estimated volume or weight of C&D materials that will be land-filled.

(b) Calculating Volume and Weight of Debris: In estimating the volume or weight of materials identified in the WMP, the Applicant shall use the standardized Conversion Rates approved by the District for this purpose.

(c) Deconstruction: In preparing the WMP, Applicants for building or demolition 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 recycling or land-filling. This can also include the sale or donation of these items.

**Section 5704. Performance Security.** The Applicant for any Large Project shall submit with the WMP a Performance Security. The amount of the Performance Security shall be calculated as three (3) percent of total Project cost. 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 WMP Compliance Official may waive the Performance Security if the total security required pursuant to this Section would be fifty (50) dollars or less.

**Section 5705. Review of WMP.**

(a) Approval: Notwithstanding any other provision of this Code, no building or demolition permit shall be issued for any Large Project unless and until the WMP Compliance Official has approved the WMP. Approval may not be required prior to issuance of said permit when an emergency demolition is required to protect public health or safety as determined by the County Health Official and/or any other governmental agency having jurisdiction. However, a WMP shall be submitted for approval prior to the removal of the C&D debris. The WMP Compliance Official shall only approve a WMP 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 Section 5703 of this Chapter;

(2) the WMP indicates that at least fifty (50) percent of all C&D debris generated by the Project will be diverted; and

(3) the Applicant has submitted an appropriate Performance Security in compliance with Section 5704 of this Chapter. If the WMP Compliance Official determines that these three conditions have been met, he or she shall mark the WMP "Approved", return a copy of the WMP to the Applicant, and notify the Alameda County Building Department that the WMP has been approved.

(b) Non-approval: If the WMP Compliance Official determines that the WMP is incomplete or fails to indicate that at least fifty (50) percent of all C&D debris generated by the Project will be reused or recycled, he or she shall either:

(1) Return the WMP to the Applicant marked "Denied", including a statement of reasons, and so notify the Alameda County Building Department, which shall then immediately stop processing the Building or Demolition Permit application, or



(2) Return the WMP to the Applicant marked Further Explanation Required. Explanations will be provided prior to the issuance of a Building or Demolition Permit.

Section 5706. Compliance with WMP.

(a) Documentation: Within 30 days after the completion of any Large Project, the Applicant shall submit to the WMP Compliance Official documentation that it has met the Diversion Requirement for the Project. The Diversion Requirement shall be that the Applicant has diverted at least fifty (50) percent of the total C&D debris generated by the Project via reuse or recycling, unless the Applicant has been granted an Infeasibility Exemption pursuant to Section 5707 of this Chapter, in which case the Diversion Requirement shall be the maximum feasible diversion rate established by the WMP Compliance Official 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 previously approved WMP for the Project adding the actual volume or weight of each material diverted and land-filled;

(3) Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this Section.

(b) Weighing of Wastes: Applicants shall make reasonable efforts to ensure that all C&D debris diverted or land-filled 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 Applicant shall use the standardized Conversion Rates approved by the District for this purpose.

(c) Determination of Compliance and Release of Performance Security: The WMP Compliance Official shall review the information submitted under subsection (a) of this Section and determine whether the Applicant has complied with the Diversion Requirement, as follows:

(1) Full Compliance: If the WMP Compliance Official determines that the Applicant has fully complied with the Diversion Requirement applicable to the Project, he or she shall cause the full Performance Security to be released to the Applicant.

(2) Good Faith Effort to Comply: If the WMP Compliance 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 WMP Compliance Official shall consider the availability of markets for the C&D debris land-filled, the size of the Project, and the documented efforts of the Applicant to divert C&D debris. If the WMP Compliance 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 thereof, to the Applicant. Any portion of the Performance Security not released to the Applicant shall be forfeited to the District, and shall be used for the purposes of promoting recycling within the District.

(3) Noncompliance: If the WMP Compliance 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 required by subsection (a) of this Section within the required time period, then the Performance Security shall be forfeited to the District. All forfeited Performance Securities shall be used for the purposes of promoting recycling within the District.

Section 5707. Infeasibility Exemption.

(a) Application: If an Applicant for a Large 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 Section 5703 of this Chapter. 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 WMP Compliance Official: The WMP Compliance 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 jurisdiction, the WMP Compliance 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 WMP Compliance Official shall determine whether it is possible for the Applicant to meet the Diversion Requirement.

(c) Granting of Exemption: If the WMP Compliance 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 WMP Compliance Official shall return a copy of the WMP to the Applicant marked "Approved for Infeasibility Exemption" and shall notify the Alameda County Building Department that the WMP has been approved and required to meet the diversion rates set forth in the WMP. The Applicant must comply with Section 5706 for the diversion rates set, and must pay the Performance Security.

(d) Denial of Exemption: If the WMP Compliance 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 form in full compliance with Section 5703 of this Chapter. If the Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 5703 of this Chapter, the WMP Compliance Official shall deny the WMP in accordance with Section 5705(b) of this Chapter.

Section 5708. Appeal. Appeals of determinations may be made first to the District's General Manager, and then to the District's Board of Directors. Determinations subject to appeal include, but are not necessarily limited to: (1) the granting or denial of an exemption; (2) whether the applicant has acted in good faith; and (3) the amount of security to be released.

Section 5709. Enforcement.

(a) Violation of any provision of this Chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, CVSD 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) Violation of any provision of this Chapter shall constitute an infraction punishable by a fine not to exceed \$100 per day for every 2,500 square feet of construction for the first violation; a fine not to exceed \$200 per day for every 2,500 square feet of construction for the second violation within one year; and a fine not to exceed \$500 per day for every 2,500 square feet of construction for each additional violation within one year. There shall be a separate infraction for each day on which a violation occurs.

EXAMPLE: Penalty for failure to comply will increase with every 2,500 square feet of project:

First InfractionSecond InfractionThird Infraction

up to 2,500 sq. ft. = \$100/day

2,500 sq. ft. = \$200/day

2,500 sq. ft. = \$500/day

2,501-5,000 sq. ft. = \$200/day

2,501-5,000 sq. ft. = \$400/day

2,501-5,000 sq. ft. =

\$1,000/day

5,001-7,500 sq. ft. = \$300/day

5,001-7,500 sq. ft. = \$600/day

5,001-7,500 sq. ft. =

\$1,500/day

Where the violation is the failure to achieve the Diversion Requirement applicable to the Project and the C & D materials from the Project have already been land-filled, the violation shall be deemed to have ceased after a period of ten (10) days. The District shall recover costs and attorneys' fees incurred in connection with enforcement of this Chapter.

(c) Enforcement pursuant to this section shall be undertaken by the District through its General Manager and the District Counsel."

**Section 2:**

**This Ordinance shall be entered in the minutes of this Board and posted in three (3) public places in the Castro Valley Sanitary District, there being no legal newspaper published in said District, and this Ordinance shall become effective November 1, 2002.**

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**Adopted by the Sanitary Board of the Castro Valley Sanitary District on the 3<sup>rd</sup> day of September, 2002.**

**AYES:DIRECTORS Akagi, Elkaim, Francis, Johnson & Waespi**

**NOES:       None**

**ABSENT:     None**

**Ralph Johnson,  
Secretary the Sanitary Board**

**Harry Francis,  
President of the Sanitary Board**