

ORDINANCE NO. 11-2008

AN ORDINANCE OF THE CITY OF FREMONT AMENDING THE FREMONT MUNICIPAL CODE BY ADDING A NEW ARTICLE 9, TITLE IV CHAPTER 2 (SOLID WASTE, RECYCLABLES, AND YARD WASTE MANAGEMENT) TO ESTABLISH CONSTRUCTION AND DEMOLITION DEBRIS DIVERSION AND RECYCLING REQUIREMENTS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND DECLARATIONS. The City Council hereby adopts the following findings and declarations in support of this ordinance.

(a) Under California law as set forth in the California Waste Management Act of 1989, (Public Resources Code Section 40000 et.seq), each local jurisdiction was required to prepare, adopt and implement source reduction and recycling plans to achieve landfill diversion goals and is required to make substantial reductions in the volume of waste materials going to landfills or face fines of up to \$10,000 per day.

(b) The voters of Alameda County, through the Waste Reduction and Recycling Act of 1990 (Measure D), have adopted a policy goal to divert from the landfill 75% of the total tonnage of materials generated in Alameda County by the year 2010. In 1999, the City of Fremont also adopted a goal of 75% diversion from the landfill by 2010.

(c) In 2000, construction and demolition (C&D) debris constituted approximately 21% of the materials landfilled in Alameda County and a similarly significant portion of the waste stream in the city. It has been demonstrated that a large amount of C&D debris is particularly suitable for recycling and reuse.

(d) Reusing and recycling C&D debris has been proven to reduce the amount of material that is landfilled, increase site and worker safety, and is cost effective. In addition reusing and recycling C&D debris can reduce methane emissions from the landfill. Methane is a potent greenhouse gas that contributes to climate change.

(e) Promoting the reuse and recycling of C&D debris is necessary to further the city's efforts to reduce waste and to comply with State law diversion requirements and local diversion goals.

(f) Except in unusual circumstances, it is feasible to divert 100% of all portland cement concrete and asphalt concrete and an average of at least 50% of all remaining C&D debris from construction, demolition, and renovation projects.

(g) Certain projects do not generate material that is readily recyclable and should be exempt from diversion and recycling requirements.

(h) The city's commitment to reduction of landfill waste requires the establishment of requirements for diversion and recycling of C&D debris.

SECTION 2. Fremont Municipal Code Title IV (Sanitation and Health, Chapter 2 (Solid Waste Recyclables and Yard Waste Management), is amended by adding a new Article 9 (Construction and Demolition Debris Diversion and Recycling Requirements) to the Fremont Municipal Code which shall read as follows:

**ARTICLE 9. CONSTRUCTION AND DEMOLITION DEBRIS
DIVERSION AND RECYCLING REQUIREMENTS**

Sec. 4-2900. Definitions.

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 undertakes any construction, demolition or renovation project within the city.

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

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.

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 handling plan.

Covered project shall have the meaning set forth in Section 4-2901 of this Article.

Debris disposal and diversion report means a city-provided summary form, to be completed and submitted by the applicant at the conclusion of a covered project which documents the total tonnage of materials diverted or landfilled.

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.

Divert means to use material for any purpose other than disposal in a landfill, including reuse and recycling.

Diversion requirement means the diversion of 100% of all portland cement concrete and asphalt concrete and at least 50% percent of the remaining construction and demolition debris generated by a project through reuse or recycling.

Exempt project shall have the meaning set forth in Section 4-2901(c) of this Article.

Permit valuation means the total construction value of the project as calculated by the building division using the city's standard valuation formulas.

Project means any activity involving construction, demolition, or renovation, in the city which requires issuance of a demolition permit, building permit or other similar permit from the city. Project also includes city public project construction, demolition or renovation.

Project diversion requirements means diversion requirement as defined above or such other diversion requirement as may be established for a project by the WHP compliance official pursuant to the exception process set forth in Section 4-2904 of this Article.

Recycle or recycling shall have the same meaning as that set forth in Section 4-2103 of this Code.

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

Reuse means further or repeated use of construction and demolition debris either on or off-site.

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

Waste handling plan (WHP) means a city-provided WHP form, to be completed and submitted by the applicant for any covered project prior to issuance of a building permit, demolition permit or other similar city permit.

WHP compliance official means the manager of the environmental services division of the transportation and operations department or designee.

Sec. 4-2901 Threshold For Covered Projects.

(a) **Covered Projects:** All construction and renovation projects within the city in which the total permit valuation is greater than or equal to \$300,000, and all demolition projects that require a demolition permit, regardless of value, within the city are covered projects and shall comply with the requirements of this Article.

(b) City Covered Projects: All city construction and renovation projects which have estimated construction costs or contract price that is or is projected to be greater than or equal to \$300,000 and all city demolition projects, regardless of value, are covered projects and shall comply with the requirements of this Article. The requirements of this Article will be reflected in the bid specifications issued by the city.

(c) Exempt Projects: The following projects are exempt from the requirements of this Article:

(1) Construction and renovation projects that do not meet the value thresholds for covered projects as set forth in subsections (a) and (b) above.

(2) Projects where only one of the following separate permits is required:

- A. kitchen/bath remodel
- B. roofing replacement
- C. electrical, mechanical or plumbing

(3) Projects that will generate only hazardous waste as defined in Section 4-2103 of this Code.

(d) While not required, it shall be encouraged that at least 50% percent of all C & D debris from exempt projects be diverted.

Sec. 4-2902 Submission Of Waste Handling Plan (WHP).

(a) Waste Handling Plan Form: Applicants for demolition, building or other similar permits for any covered project shall, prior to issuance of the permit, submit a properly completed waste handling plan (WHP), on the city provided WHP form. The completed WHP shall contain all of the following:

(1) The estimated volume or weight of C&D debris that the project will generate listed by each material type; and

(2) The estimated volume or weight of C&D debris to be diverted or not diverted, listed by each type of material; and

(3) The name of all vendors or facilities that the applicant proposes to use to collect or receive that material; and

(4) Contact information for the applicant, the project address and permit number.

(b) City Covered Projects: The project manager of any city covered project shall submit a properly completed waste handling plan to the WHP compliance official prior to beginning any construction or demolition activities.

(c) Calculating Volume and Weight of Debris: In estimating the volume or weight of materials identified in the WHP, the applicant shall use the standardized conversion rates approved by the city for this purpose.

(d) Deconstruction: In preparing the WHP, applicants for covered projects that involve the removal of all or part of an existing structure shall consider deconstruction, to the maximum extent feasible, and shall where feasible make the materials generated available for salvage prior to demolition.

Sec. 4-2903 Review of Waste Handling Plan.

(a) Compliance as a Condition of Approval: Compliance with the provisions of this Article shall be listed as a condition of approval on any building or demolition permit for a covered project. Failure to include such a condition shall not relieve the applicant from compliance with this Article.

(b) WHP Approval Required Prior to Permit Issuance: Notwithstanding any other provision of this Code, no building, demolition or other similar permit shall be issued for any covered project unless, and until, the WHP compliance official has approved the WHP. Approval shall not be required, however, where an emergency demolition is required to protect public health or safety.

(c) Criteria for WHP Approval: The WHP compliance official shall only approve a WHP if he or she first determines that all of the following conditions have been met:

(1) The WHP provides all of the information set forth in Section 4-2902 of this Article; and

(2) The WHP indicates that 100% of the portland cement concrete and asphalt concrete and 50% of all remaining C&D debris generated by the project will be diverted.

(d) If the WHP compliance official determines that these conditions have been met, he or she shall mark the WHP “approved”, return a copy of the WHP to the applicant, and notify the building division that the WHP has been approved.

(e) WHP Disapproval: If the WHP compliance official determines that the WHP is incomplete or fails to indicate that 100% of portland cement concrete and asphalt concrete and at least 50% of all remaining C&D debris generated by the project will be reused or recycled, he or she shall:

(1) Notify the building division, which shall then immediately stop processing the building, demolition or other permit application; and

(2) Return the WHP to the applicant with a statement of reason for disapproval and a request to correct, add to or explain the information, and resubmit for approval.

Sec. 4-2904 Exception to Diversion Requirement.

(a) Application: If an applicant for a covered project experiences unique circumstances that the applicant believes make it infeasible to comply with the diversion requirement, the applicant may apply for an exception at the time that he or she submits the WHP. The applicant shall indicate on the WHP 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 WHP Compliance Official: The WHP 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. The WHP compliance 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 WHP compliance official shall determine whether it is feasible for the applicant to meet the diversion requirement.

(c) Granting of Exception: If the WHP compliance official determines that it is infeasible for the applicant to meet the diversion requirements, he or she shall determine the maximum feasible diversion rate for the project which shall then be incorporated into the WHP as the project diversion requirement. The WHP compliance official shall return a copy of the WHP to the applicant marked "approved for exception" and shall notify the building division that the WHP has been approved.

(d) Denial of Exception: If the WHP compliance official determines that it is feasible for the applicant to meet the diversion requirement, he or she shall so inform the applicant in writing. The applicant shall have 10 business days to resubmit a WHP form in full compliance with Section 4-2903 of this Article. If the applicant fails to timely resubmit the WHP, or if the resubmitted WHP does not comply with Section 4-2903 of this Article, the WHP compliance official shall disapprove the WHP in accordance with Section 4-2903(d) of this Article.

Sec. 4-2905 Compliance With Waste Handling Plan.

(a) Documentation: No later than 30 calendar days after the completion of any covered project, and as a precondition to issuance of a temporary or final certificate of occupancy by the city, the applicant shall submit to the WHP compliance official documentation that it has met the project diversion requirement as set forth in the WHP. This documentation shall include all of the following:

(1) Receipts from the vendors or facilities which collected or received project C&D debris showing the actual weight or volume of each material, or detail reports from the facility or vendor; and

(2) A copy of the previously approved WHP for the project; and

(3) A City-provided debris disposal and diversion report summary form listing the actual volume or weight of C&D debris that was diverted by type of material and diversion method, and the actual volume or weight of C&D debris that was not diverted; and

(4) Any additional information the applicant believes is relevant to determining its efforts to comply in good faith with this Article.

(b) Weighing of Wastes: Applicants shall make reasonable efforts to ensure that all C&D debris diverted or placed in a landfill 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 city for this purpose.

(c) Determination of Compliance: The WHP compliance official shall review the information submitted under subsection (a) of this Section and determine whether the applicant has complied with the project diversion requirement, as follows:

(1) Full compliance: If the WHP compliance official determines that the applicant has fully complied with the project diversion requirement, he or she shall consider the requirement fulfilled.

(2) Good faith effort to comply: If the WHP compliance official determines that the project 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. In making this determination, the WHP compliance official shall consider any relevant information provided by the applicant regarding the availability of markets for the C&D debris that was not diverted, the size of the project, and the documented efforts of the applicant to divert C&D debris. If the WHP compliance official determines that the applicant has made a good faith effort to comply with this Article, he or she shall consider the project diversion requirement fulfilled.

(3) Noncompliance: If the WHP compliance official determines that the applicant has not made a good faith effort to comply with the project diversion requirements, or if the applicant fails to submit the documentation required by

subsection (a) of this Section within the required 30 calendar day time period, the applicant shall be in violation of this Article and shall be subject to enforcement as set forth in Section 4-2907.

Sec. 4-2906 Appeal. An applicant may appeal a determination made by the WHP compliance official under this Article to the city manager or person designated by the city manager to hear such appeals. To appeal, the applicant shall file a written appeal with the city clerk within 10 business days after the determination of the WHP compliance official, stating the reasons for the appeal. An appeal is limited to the following issues: (1) the granting or denial of an exception to the diversion requirements; and (2) whether the applicant has made a good faith effort to comply with the project diversion requirements. The city manager or designee shall hear the appeal within 30 calendar days and shall give 10 calendar days prior written notice to the applicant. Decisions of the city manager or designee shall be final and the aggrieved party may seek relief from the decision only by complying with the requirements set forth in Title 1, Chapter 6 of this Code (Section 1-6100, et seq.).

Sec. 4-2907 Violations. In addition to the provisions of Article 8 of this Chapter (Section 4-2800 et seq.), the following shall apply to violations of this Article.

(a) Violation of any provision of this Article is an offense subject to all of the provisions of Title 1, Chapter 3 of this Code and the administrative remedy provisions of Title 1, Chapter 4 of this Code.

(b) For purposes of the administrative remedy provisions of this Code, the failure to comply or demonstrate good faith efforts to comply with the project diversion requirements shall result in a penalty to be assessed at the rate of \$1000 per ton of material that was to be diverted as set forth in the WHP, but was not demonstrated to have been diverted.

SECTION 3. ENVIRONMENTAL REVIEW.

This ordinance is exempt from review under the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(c)(3) because it can be seen with certainty that it has no possibility of causing a significant environmental effect

SECTION 4. SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article 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 this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article 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 provisions of this Article are declared to be severable.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced January 1, 2009

SECTION 6. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Section 36933(c) of the Government Code, once, in Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause to be again published in Tri-City Voice the summary of this ordinance with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

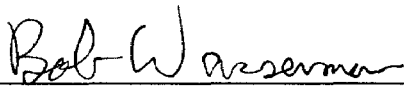
The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the 22nd day of July, 2008 and finally adopted at a regular meeting of the City Council held on the 2nd day of September, 2008 by the following vote, to wit:

AYES: Mayor Wasserman, Vice Mayor Harrison, Councilmembers Cho, Wieckowski, and Natarajan

NOES: None

ABSENT: None

ABSTAIN: None



Mayor

ATTEST:

APPROVED AS TO FORM:



City Clerk



Sr. Deputy City Attorney II