

Mark F. Uscell
CITY ATTORNEYORDINANCE NO. 12253 C. M. S.

REVISED

AN ORDINANCE ADDING CHAPTER 15.34 TO
THE OAKLAND MUNICIPAL CODE
ESTABLISHING CONSTRUCTION AND DEMOLITION DEBRIS
WASTE REDUCTION AND RECYCLING REQUIREMENTS

WHEREAS, the California Integrated Waste Management Act, of 1989 (Assembly Bill 939), requires that each city and county in the state reduce material landfilled by fifty percent (50%) by end of the year 2000; and

WHEREAS, each city and county in California, including the City of Oakland (City), could face fines up to \$10,000 a day for not meeting the above mandated goal; and

WHEREAS, the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D), adopted a goal to reduce the weight of discarded materials generated in Alameda County by seventy-five percent (75%) by the year 2010; and

WHEREAS, Construction and Demolition (C&D) debris, based on a 1995 Alameda County Waste Management Authority study, constitutes approximately sixteen percent (16%) of materials landfilled in Alameda County; and these materials have a significant potential for waste reduction and recycling; and

WHEREAS, in 1999, Oakland disposed of 475,000 tons in landfills of which 76,000 tons was C&D debris; and

WHEREAS, it is anticipated that construction and demolition activities in the City will increase due to the City's development goals and that these construction and demolition activities will increase the amount of C&D debris being sent to landfills; and

WHEREAS, reusing, salvaging, and recycling C&D debris conserves natural resources and reduces the need for landfill space; and

WHEREAS, reusing, salvaging and recycling C&D debris furthers the City's efforts to stimulate markets for recycled materials and may reduce project costs to contractors and developers when compared to landfilling these materials; and

WHEREAS, the City Council of the City of Oakland finds and determines that the public interest, health, safety and welfare will be best served if C&D debris is diverted from landfill disposal and that the diversion be monitored by the City; and

WHEREAS, this ordinance has been duly processed with proper public notice.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1:

Chapter 15.34, entitled "CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND RECYCLING REQUIREMENTS" is hereby added to the Oakland Municipal Code to read as follows:

"CHAPTER 15.34

15.34.010 TITLE

The provisions of Section 15.34.010 through Section 15.34.090 inclusive, shall be known as the City of Oakland CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND RECYCLING REQUIREMENTS

15.34.020 PURPOSE AND INTENT

The purpose of these provisions is to prescribe requirements designed to meet and further the goals of the California Integrated Waste Management Act of 1989 Assembly Bill 939 and the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D). These requirements shall apply to Affected Projects as specified in this Chapter.

The intent of these provisions is to divert at a minimum 50% of C&D Debris from landfills; process and return the materials into the economic mainstream thereby conserving natural resources; and stimulate markets for recycled and salvaged materials.

The City Manager or his/her designee is authorized to develop guidelines to implement the requirements of this Chapter, which may be amended from time to time.

15.34.030 DEFINITIONS

For the purpose of this Chapter 15.34, the following definitions shall apply:

- a. "Addition" means an extension or increase in floor area or height of a building or structure (as adopted in OMC, §15.04.005).
- b. "Affected Project" means a project that requires a Waste Reduction and Recycling Plan (WRRP) because it meets one or more of the following criteria:
 - (1) It is new construction.
 - (2) It is non-residential or Apartment House Demolition.

- (3) It is a non-residential or Apartment House Addition or Alteration, that has a permit valuation greater than or equal to \$50,000 in year 2000 dollars (subject to inflation adjustments.)

Affected Projects exclude projects required to divert C&D Debris under the 1997 requirements of the Modifications to the Standard Specifications for Public Works Construction (Ordinance No. 12049 C.M.S.).

- c. "Alteration" means any change, addition or modification in construction or occupancy (as adopted in OMC §15.04.005).
- d. "Apartment House" means any building or portion thereof that contains three or more dwelling units and, for the purpose of this Chapter, includes residential condominiums (as adopted in OMC §15.04.005).
- e. "Appeal" means the process outlined in § 15.34.090 of this Chapter
- f. "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity that undertakes any Construction, Demolition, Addition, or Alteration project within the City.
- g. "Building Official" means the officer or other designated authority charged with the administration and enforcement of the California Building Code (CBC) and the City's amendments to the CBC (as adopted in OMC; §15.04.005).
- h. "Construction" means the manner or method of building (as adopted in OMC, §15.04.005).
- i. "Construction and Demolition Debris", "C&D Debris", or "Construction Debris" means waste building materials resulting from Construction, Addition, remodeling, repair Alteration or Demolition operations (as adopted in OMC, §8.28.010 and §15.04.005).
- j. "Demolition" means the deconstructing, destroying, razing, tearing down, or wrecking of any facility including its foundation, covered by this Chapter. As used herein, the word "demolition" shall include any partial demolition and any interior demolition affecting more than ten percent of the replacement value of the structure as determined by the Building Official. Demolition work includes (1) proper disposal of recyclables, solid waste, and hazardous materials pursuant to applicable regulations and approved plans, if any, (2) termination of utilities serving the premises including permits and final inspections and approvals, (3) removal of driveways and repair of public sidewalks, as required, and (4) site cleanup and restoration including grading, landscaping, and fencing as required.

- k. "Divert", "Diverted", or "Diversion" means to use C&D Debris for any purpose other than disposal in a landfill, incineration facility, or alternative daily cover. Methods to Divert materials from landfills include Reuse, Salvage, and Recycling.
- l. "Diversion Attainment" means at least fifty percent (50%) by weight of the total C&D Debris is Diverted on an Affected Project.
- m. "Hearing Officer" means the City staff designated by the City Manager to whom appeals can be made under this Chapter.
- n. "Non-Affected Projects" means projects that do not require a WRRP. Applicants for Non-Affected Projects shall be encouraged to Divert at least fifty percent (50%) of all project-related C&D Debris.
- o. "Recyclables" or "Recycle" or "Recycling" means residential, commercial, or industrial materials or by-products which are set aside, handled, packaged, or offered for collection in a manner different than solid waste for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities (as adopted in OMC, §8.28.010).
- p. "Reuse" means recovering material for repeated use in the same form. This includes materials that are reused at the same location as they are generated.
- q. "Salvage" means the recovering of C&D Debris from a building or demolition site for the purpose of recycling, reuse, or proper storage for future recycling or reuse.
- r. "Source Separated" means recyclables that have been segregated from solid waste by or for the generator thereof on the premises at which they were generated for handling different from that of solid waste. This does not require that different types of recyclable commodities be separated from each other, except from organic recyclable material (as adopted in OMC, §8.28.010).
- s. "Summary Report" means the report to be submitted to the Building Official at the conclusion of the Affected Project and prior to the final inspection, issuance of a temporary certificate of occupancy, or certificate of occupancy.
- t. "Targeted Materials" means the C&D Debris listed on the WRRP Form that could potentially be Reused, Recycled, or Salvaged.
- u. "WRRP" means Waste Reduction and Recycling Plan.
- v. "WRRP Form" means a form, provided by the City for the purpose of compliance with this Chapter that must be submitted by the Applicant for any Affected Project.

- w. "WRR Review Official" means the Waste Reduction and Recycling Review Official who is the City staff designated and authorized by the City Manager and is responsible for implementing this Chapter.

15.34.040 TRANSPORTATION OF C&D DEBRIS

It is unlawful for any person other than the City's licensed franchised collector or those persons employed by the franchise collector to collect or haul any Construction and Demolition Debris within the City except:

- (a) Source separated Construction and Demolition Debris, including but not limited to those collected by a person under contract to the City and those collected through private arrangements between the generator and the collector. Loads, which consist of, mixed paper and which contain more than ten percent by weight of residual shall not be considered source separated recyclables. Loads which consist of recyclables other than mixed paper and which contain more than five percent by weight of residual shall not be considered source separated recyclables; or,
- (b) Construction and Demolition Debris, (1) removed from a premises by a licensed contractor as an incidental part of a total construction, remodeling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station, or disposal facility.

15.34.050 SUBMISSION OF A WASTE REDUCTION AND RECYCLING PLAN (WRRP)

WRRP Forms: For Affected Projects, prior to issuance of a building or demolition permit, the Applicant shall complete and submit a WRRP Form to the City's Building Official. The completed WRRP Form shall delineate all of the following:

- (1) The estimated volume or weight of the Affected Project C&D Debris to be generated, listed by each type of material; and
- (2) Volume or weight of the C&D Debris to be Reused, Salvaged or Recycled listed by each type of material; and
- (3) The estimated volume or weight of C&D Debris that will be landfilled listed by each type of material.

15.34.060 REVIEW OF WRRP

- (a) Notwithstanding any other provision of this Chapter, no building or demolition permit shall be issued by the City for any Affected Project prior to approval of the WRRP by the WRR Review Official. Approval shall not be required if an

emergency demolition is required to protect public health or safety pursuant to §15.36.080 of the OMC.

(b) Using the established guidelines, the WRR Review Official shall approve a WRRP only if:

(1) The WRRP provides all the information set forth in Section 15.34.050 of this Chapter; and,

(2) The WRRP indicates that at least fifty percent (50%) by weight of all C&D Debris generated by the project will be Diverted; or

(3) The Applicant demonstrates good cause as to why at least fifty percent (50%) by weight of all C&D Debris generated by the project will not be Diverted.

If the WRR Review Official fails to approve the WRRP, he/she shall explain in writing the basis for denial.

15.34.070 SUBMISSION OF A COMPLETED SUMMARY REPORT

(a) Documentation: At the conclusion of each Affected Project and prior to the final inspection, issuance of temporary certificate of occupancy, or certificate of occupancy by the City the Applicant shall submit to the Building Official a Summary Report which contains the following documentation:

(1) The actual volume or weight of C&D Debris that was Diverted by type of material, Diversion method, and the actual volume or weight of C&D Debris that was not Diverted;

(2) Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this Chapter 15.34;

(3) Any barriers encountered that prohibited Diversion of C&D Debris; and

(4) Any recommended actions that would further the efforts to Recycle C&D Debris.

(b) Determination of Diversion: The WRR Review Official shall review the information submitted under Section 15.34.050 (a) to determine whether the Applicant has Diverted fifty percent (50%) by weight of the C&D Debris based on established guidelines, as follows:

(1) Diversion Attainment: The Applicant shall be found to have achieved a Diversion Attainment if at least fifty percent (50%) by weight of the

C&D Debris generated by the Affected Project is Diverted, and appropriate documentation as outlined in Section 15.34.070 is provided.

- (2) Good Faith Effort: When the WRR Review Official determines that the Affected Project has not achieved Diversion Attainment, he/she shall determine whether the Applicant has made a good faith effort to comply with this Chapter 15.34. In making this determination, the WRR Review 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 project, the documented efforts of the Applicant to Divert C&D Debris, and barriers encountered.
- (3) Non-attainment: The WRR Review Official shall determine the Affected Project to have a non-attainment status if he/she determines that the Applicant has not made a good faith effort to achieve Diversion Attainment or if the Applicant fails to submit the documentation required by Section 15.34.070. All non-attainment information including Applicant name, type and size of project, and any reason for non-attainment shall be documented by the WRR Review Official.

15.34.080 CITY'S RIGHTS TO MONITOR AND INSPECT

- (a) Audit: City's WRR Review Official may inspect and monitor all Affected Projects to determine levels of actual Diversion activities and validate the information provided in the WRRP and Summary Report.
- (b) Supporting Documentation: Applicant shall retain the receipts or weight tickets for the quantities of materials reused, salvaged, recycled and landfilled as indicated in the Summary Report Form for one year after the final inspection, and issuance of temporary certificate of occupancy or certificate of occupancy.
- (c) Materials Targeted for Diversion: The City Manager or his/her designee may change the C&D Debris materials targeted for Diversion from time to time, based on local markets and conditions to further the intent of this Chapter.

15.34.090 APPEALS

An appeal of the WRR Official's decision not to approve the WRRP shall be made to the Hearing Officer according to the following appeal procedures:

- (a) Within ten calendar days after the date of a written decision by the WRR Review Official to deny the WRRP, an appeal in writing from said decision must be filed with the WRR Review Official by the Applicant or any other

interested party on a form prescribed by the WRR Review Official. The appeal shall state specifically the error, abuse of discretion, or claim where the decision of the WRR Review Official was not supported by substantial evidence in the record.

- (b) Upon receipt of the appeal, the Hearing Officer shall set the date for consideration thereof and, not less than ten (10) days prior thereto, give a written notice to the Applicant and or appellant.
- (c) In deciding the appeal, the Hearing Officer shall consider the purpose and intent, as well as the letter, of the pertinent provisions of this Chapter 15.34, and shall affirm, modify, or reverse the written decision of the WRR Review Official.
- (d) The written decision of the Hearing Officer shall be final.
- (e) Appeal fees shall be in accordance with the City's Master Fee Schedule."

SECTION 2 - Evaluation

Beginning ~~July 1, 2002~~, January 2001, the City will evaluate the Construction and Demolition Debris Reduction and Recycling, Ordinance to determine its effectiveness in reducing the amount of C&D Debris landfilled. In this determination, the City will consider issues such as the amount of C&D Debris landfilled, volume of Construction and Demolition activity, markets for C&D Debris, and other barriers encountered by Applicants. If the City determines the C&D Debris that was landfilled had the potential to be Recycled, Salvaged, or Reused, then the City may amend these provisions and implement the necessary measures to Divert more C&D Debris.

SECTION 3 - Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, 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 Ordinance 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 Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared severable.

SECTION 4 - Effective Date

This ordinance shall become effective upon adoption. Enforcement of this Ordinance shall commence on July 1, 2000.

SECTION 5 - Findings

The City Council finds and determines that:

- (a) This Ordinance is necessary to further the City's efforts to meet the Assembly Bill 939 and Alameda County Measure D requirements.
- (b) The foregoing recitals are true and correct and are an integral part of this Ordinance.

I hereby certify that the foregoing is a full, true and correct copy of an Ordinance passed by the City Council of the City of Oakland on JUN 27 2000.

CEDA FLOYD

City Clerk and Clerk of the Council

Per Onetha Middleton Deputy

