

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2002-

AN ORDINANCE ADOPTING A NEW CHAPTER 3-7
OF THE SAN LEANDRO MUNICIPAL CODE
REGULATING WASTE REDUCTION AND
RECYCLING OF CONSTRUCTION AND
DEMOLITION DEBRIS

THE CITY COUNCIL OF THE CITY OF SAN LEANDRO DOES ORDAIN AS
FOLLOWS:

SECTION 1. Title 3 of the San Leandro Municipal Code is hereby amended by the adoption of a new Chapter 7 to read as follows:

CHAPTER 7 CONSTRUCTION AND DEMOLITION DEBRIS WASTE
REDUCTION AND RECYCLING REQUIREMENTS

ARTICLE 1. GENERAL

3-7-100 Purpose and Findings

This Chapter 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 by December 31, 2000, and aid in compliance with the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D). Since construction and demolition debris has, in past years, constituted as much as 16% of the materials deposited in Alameda County landfills, the City has identified such debris and waste as a significant target for reduction and recycling. The intent of this Chapter is to divert building materials from landfills in order to process and return them to the economic mainstream, thereby conserving natural resources and stimulating markets for recycled and salvaged materials. To that end, projects that are subject to the requirements of this Chapter must recycle 100% of asphalt and concrete and recycle 50% of the remainder of the construction and demolition debris, as provided below.

3-7-110 Definitions

The following definitions shall govern the construction of this Chapter, unless context requires otherwise, or the term is more specifically defined within.

(a) **Annual Debris Recycling Certification Application.** "Annual Debris Recycling Certification Application" means the completed Debris Recycling Certification Application Form approved by the City and submitted for the purpose of demonstrating compliance with the requirements of Section 3-7-230 of this Chapter.

(b) **Applicant.** "Applicant" shall mean any individual, firm, limited liability company, association, partnership, the State, and political subdivision and/or agency of the State, any community college district, industry, business, public or private corporation or any other entity that applies to the City for permits to undertake any construction, demolition, renovation or roofing Project within the City that is subject to this Chapter.

(c) **Certified Applicant.** "Certified Applicant" means an Applicant who has demonstrated compliance with the requirements of Section 3-7-230 of this Chapter.

(d) **Construction.** "Construction" means the building of any structure or portion thereof, including, but not limited to, improvements to or remodeling or repair of an existing facility or structure.

(e) **Construction and Demolition Debris, C&D Debris, Construction Debris.** "Construction and Demolition Debris", "C&D Debris" and "Construction Debris" mean used or discarded materials removed from the premises during construction or renovation of a structure resulting from construction, remodeling, repair, improvement, or demolition operations on any pavement, street, driveway, house, building, or other structure or improvement regardless of the nature of such structure or improvement.

(f) **Conversion Rate.** "Conversion Rate" means the rate set forth in the standardized Conversion Rate Table approved by the City, pursuant to this Chapter, for use in estimating the volume or weight of materials in a Debris Recycling Statement.

(g) **Covered Project.** "Covered Project" means a Project that is subject to the requirements of this Chapter, pursuant to Section 3-7-200.

(h) **Debris Recycling Statement.** "Debris Recycling Statement" or "DRS" means the completed DRS form approved by the City and submitted by the Applicant for the purpose of assessing compliance with this Chapter.

(i) **Debris Recycling Statement Compliance Officer.** "Debris Recycling Statement Compliance Officer" means the Manager of Environmental Services or his/her designee. The Debris Recycling Statement Compliance Officer shall be the individual responsible for implementing this Chapter.

(j) **Demolition.** "Demolition" means the destroying, razing, tearing down or wrecking of any pavement, street, driveway, house, building, or other structure or improvement regardless of the nature of such structure or improvement whether in whole or in part, whether interior or exterior.

(k) **Divert.** "Divert" means to use material for any purpose other than disposal in a landfill or incineration facility. Methods of diverting materials from landfills shall include Reuse, Recycling, and Salvage.

(l) **Diversification Attainment.** "Diversification Attainment" means the diversion of 100% of the asphalt, concrete and similar material, and at least 50% by weight, of the total of all other C&D Debris generated by a Covered Project.

(m) **Project.** "Project" means any activity which requires an application for a building permit, demolition permit, encroachment permit or other similar permit from the City of San Leandro.

(n) **Recycling.** "Recycling" means the process of collecting, sorting, cleansing, treating, and/or reconstituting of 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.

(p) **Renovation.** "Renovation" means any change, addition or modification in an existing structure or improvement.

(q) **Reuse.** "Reuse" means further or repeated use of Construction or Demolition Debris in the same or different form.

(r) **Salvage.** "Salvage" means the controlled removal of C&D Debris from a permitted building or demolition site for the purposes of Recycling, Reuse, or storage for later Recycling or Reuse.

(s) **Source Separated.** "Source Separated" means recyclables that have been segregated from solid waste, by or for the generator, on the premises where they were generated, in order to manage the recyclables separately from the solid waste.

(t) **Targeted Materials.** "Targeted Materials" means the C&D Debris listed pursuant to Section 3-7-440.

ARTICLE 2. DIVERSION OF CONSTRUCTION AND DEMOLITION DEBRIS

3-7-200 Thresholds For Covered Projects

The provisions of this Chapter shall apply to all Projects within the City involving Construction, Demolition or Renovation that have a Project valuation in excess of \$100,000. For the purposes of this Section, the value of Projects shall be as determined by the City's Building Official or designee in connection with permit issuance. The valuation threshold established by this section shall be adjusted every five years, beginning in the year 2008, to reflect an increase or decrease in the cost of construction due to inflation or deflation, by comparing the Engineering News Record Construction Cost Index (20-city average) for the five-year anniversary month over the same Construction Cost Index for the same month of the fifth year prior to the anniversary month.

3-7-210 Non-Covered Projects

Applicants for Projects that do not meet the valuation threshold requirement set forth in Section 3-7-200 shall be encouraged to meet the Diversion Attainment standards set forth in this Chapter.

3-7-220 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.

3-7-230 Certification Process and Compliance Audits

(a) Applicants who have completed two (2) or more Covered Projects within the past twelve (12) months are eligible to apply to the City for certification under the terms of this Section. Such application shall be on a form approved by the City, and may be supplemented by any other statements, documents, or other materials that will assist the Debris Recycling Statement Compliance Officer in determining the Applicant's past compliance with the requirements of this Chapter.

(b) Applicants certified under the terms of this Section must comply with all the requirements of this Chapter; however, Certified Applicants are not required to complete a Debris Recycling Statement on a project-by-project basis. Certified Applicants are required to file an Annual Debris Recycling Certification Application at the time of certification, and annually thereafter at the time such certification is renewed.

(c) In connection with the application for certification, and as a condition to approval thereof, Applicant shall execute a form of written consent acknowledging the City's right and authorizing the City to conduct audits of Applicant's business records to determine continuing compliance with the requirements of this Chapter. Such audits will consist of a review of business records and other matters to determine that Diversion is occurring at a rate consistent with the intent of this Chapter. Such audits may be conducted in connection with determining eligibility for certification under this section, in connection with annual re-certification under this section, and at other times as may be required in the judgment of the Debris Recycling Statement Compliance Officer to assure continuing compliance with the requirements of this Chapter. All audits will take place either on the premises where the Applicant maintains business records or at City offices, during regular business hours, and upon reasonable notice to the Applicant.

3-7-240 Residential and Mixed-Use Subdivisions

(a) Where a Covered Project involves construction of a new residential or mixed-use subdivision requiring the issuance of five (5) or more building permits, an Applicant shall only be required to file a single Debris Recycling Statement with respect to such Covered Project.

ARTICLE 3. DEBRIS RECYCLING STATEMENTS

3-7-300 Submission of Debris Recycling Statement

(a) Applicants other than Certified Applicants for permits involving Covered Projects shall complete and submit a Debris Recycling Statement (DRS) on a form approved by the City. The City shall provide, as part of the permit application package, a DRS form to the Applicant. The DRS form completed by an Applicant shall include and indicate all of the following:

- (1) The estimated volume or weight of the C&D Debris, by type of material generated;
 - (2) The estimated volume or weight of materials that can feasibly be Diverted via Reuse or Recycling;
 - (3) The vendor or facility that the Applicant proposes to use to Salvage, collect and/or receive Diverted material;
 - (4) The estimated volume or weight of materials that will be deposited in a landfill.
 - (5) Any other information requested, and deemed necessary for determining compliance with this Chapter, by the Debris Recycling Statement Compliance Officer.
- (b) 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.

3-7-310 Review of Debris Recycling Statement

(a) Timeframe for Review: The Debris Recycling Statement Compliance Officer will review the DRS and advise the Applicant within five working days of receipt of the DRS of his/her decision regarding approval or non-approval.

(b) Approval of Debris Recycling Statement:

(1) Prior to issuance of a building permit for a Covered Project, an Applicant other than a Certified Applicant shall submit a DRS for such Project. A DRS shall only be approved if the Debris Recycling Statement Compliance Officer determines that the following conditions have been met:

(i) The DRS provides all of the information required by this Chapter; and
(ii) The DRS indicates that the Applicant will divert 100% of the asphalt, concrete and other similar material, and at least 50% by weight, of all other C&D Debris generated by the Project; or

(iii) The DRS indicates that the Applicant will divert 100% of the asphalt, concrete, and similar materials, and demonstrates good cause as to why at least fifty percent (50%) by weight of the remainder of the C&D Debris generated by the Project will not be so diverted; or

(iv) The DRS indicates that the Project will generate a negligible amount of C&D Debris.

(2) If the Debris Recycling Statement Compliance Officer determines that the DRS has met condition (i) and either condition (ii), (iii), or (iv) of the preceding subsection, the DRS shall be marked "Approved". A copy of the approved DRS shall be returned to the Applicant.

(c) Non-Approval of Debris Recycling Statement.

(1) If the Debris Recycling Statement Compliance Officer determines that the Applicant has failed to comply with subsection (b)(1)(i), or either of subsections (b)(1)(ii), (b)(1)(iii) or (b)(1)(iv), the Debris Recycling Statement Compliance Officer shall either return the DRS to the Applicant requesting complete documentation of the reasons that the requirements of this Chapter cannot be met, or shall return the DRS to the Applicant marked "Denied." If the DRS is returned marked "Denied," it shall be accompanied by a statement of reasons for the denial.

(2) If the DRS is denied, the Debris Recycling Statement Compliance Officer may enforce any violation of this Chapter as provided in Section 3-7-600.

(d) 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.

ARTICLE 4. COMPLIANCE

3-7-400 Weighing of C&D Debris

Applicant shall make every reasonable effort to assure that all C&D Debris Diverted and/or deposited in a landfill are measured and recorded using the most accurate method of measurement available. To the extent possible, 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. A volumetric measurement shall be used for

all C&D 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.

3-7-410 Determination of Compliance

(a) Certified Applicants. Certified Applicants must demonstrate compliance with the requirements of this Chapter in connection with their initial application for certification, and thereafter in connection with their annual recertification. Compliance will be determined based on information contained in the Annual Debris Recycling Certification Application, through audits of weight tags and Recycling and/or disposal facility receipts, and other business records as necessary. Certified Applicants are required to keep such Recycling and disposal records for a period of three years. The Debris Recycling Statement Compliance Officer may conduct audits as needed, in addition to the annual audit in connection with recertification, to assure compliance with this Chapter.

(b) Non-certified Applicants. Upon completion of any Covered Project, an Applicant other than a Certified Applicant shall submit weight tags generated by such Covered Project to the Debris Recycling Statement Compliance Officer. The Debris Recycling Statement Compliance Officer shall review such weight tags to determine whether the Applicant has achieved Diversion Attainment. Such determination shall be based upon the requirements of this Chapter and the following guidelines:

(1) The Applicant shall be found to have achieved Diversion Attainment if (1) 100% of the asphalt, concrete and similar material generated by the Project has been Diverted and appropriate documentation thereof as required by this Chapter has been provided to the City; and (2) at least 50%, by weight, of the remainder of the C&D Debris generated by the Project has been diverted and appropriate documentation thereof as required by this Chapter has been provided to the City.

(2) When the Applicant has not achieved Diversion Attainment for a Covered Project, the Debris Recycling Statement Compliance Officer shall determine if such Applicant has made a good faith effort to comply with the requirements of this Chapter. In making this determination, consideration may be given to any relevant information provided by the Applicant, including but not limited to information regarding the availability of markets for the C&D Debris that was not diverted, the size and nature of the Project, and the documented efforts of Applicant to divert C&D Debris. If the Debris Recycling Statement Compliance Officer determines that the Applicant has made a good faith effort to comply with the C&D diversion and documentation provisions herein above set forth, further compliance with this Chapter in respect to such Project shall be excused.

(3) Applicant shall be in a "Non-Attainment" status if it is determined that (1) 100% of the asphalt, concrete, and similar material generated by the Project was not Diverted; (2) that 50% of the remainder of the C&D Debris was not Diverted; (3) the Applicant fails to submit the documentation required by this Chapter; and (4) that a good faith effort was not made.

3-7-420 Right to Monitor and Inspect

(a) During regular business hours and upon reasonable notice of not less than twenty-four (24) hours, the Debris Recycling Statement Compliance Officer may inspect any

Covered Project to determine levels of actual diversion activities and to validate the information contained in the DRS or in other documents or representations provided by the Applicant. If consent to such inspection is not granted by the Applicant, or if the Applicant or other person in control of the Project site cannot be located after reasonable efforts are made, the Debris Recycling Statement Compliance Officer shall have recourse through every remedy provided by law to secure entry.

(b) Notwithstanding the above, the Debris Recycling Statement Compliance Officer may inspect any Covered Project with less than twenty-four (24) hours notice with the consent of the Applicant or the other person on the project site responsible for the project in the absence of the Applicant.

(c) Upon request by the City, Applicant shall provide as soon as practicable and no later than five (5) working days, documentation, papers, and records relating to the disposal of C&D Debris for a Covered Project.

3-7-430 Supporting Documentation

Applicants shall retain receipts and weight tags for the quantities of materials Reused, Salvaged, Recycled, and deposited in a landfill in connection with a Covered Project for a period of three years following the final inspection and issuance of a temporary or final certificate of occupancy. Applicant shall make such records available to the City as soon as practicable upon request.

3-7-440 Targeted Materials

In furtherance of the goals established by this Chapter, the Manager of Environmental Services, or his/her designee, shall establish a list of materials that could potentially be Reused, Recycled or Salvaged, and may, from time to time, amend the list based upon local markets and conditions, taking into consideration the economic feasibility of compliance, and the availability of local recycling facilities.

ARTICLE 5. APPEALS

3-7-500 Appeals

Any Applicant affected by any decision, action, or determination made by the Debris Recycling Statement Officer who is interpreting or implementing the provisions of this Chapter may file with the City Manager a written appeal within ten (10) days of such decision, action, or determination, setting forth in detail the facts supporting the Applicants' appeal. The City Manager shall appoint a Hearing Officer who shall hear the appeal within sixty (60) days from the date of the filing. The Hearing Officer shall make a ruling on appeal within thirty (30) days of the close of the hearing. The Hearing Officer's determination shall be final.

ARTICLE 6. ENFORCEMENT

3-7-600 Enforcement

Violations of this Chapter may be enforced in the following manner: 1) Pursuant to Chapter 1-12 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

or equity. Violations may also result in revocation of Applicant's business license pursuant to Section 2-2-440 of this Code.

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of the Ordinance is for any reason held to be unconstitutional, 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 hereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause and phrase of the Ordinance irrespective of the fact that one or more of them would be declared unconstitutional or invalid. To this end, the provisions of the Ordinance are declared to be severable.

SECTION 3: This ordinance shall take effect thirty (30) days after adoption and the title thereof shall be published once prior to adoption.

Introduced by Council Member _____ on this _____ day of _____, 2002, and passed to print by the following called vote:

Members of the Council:

Ayes:

Noes:

Absent:

Attest: _____
Marian Handa, City Clerk

Passed and adopted this _____ day of _____, 2002, after publication on _____, 2002, by the following called vote:

Members of the Council:

Ayes:

Noes:

Absent:

Attest: _____
Marian Handa, City Clerk

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