

ORDINANCE NO. _____

An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 26 “Construction And Demolition Waste Requirements”, To Title 8 Of The Emeryville Municipal Code; And Amending Section 1-2.01(f) Of Chapter 2 Of Title 1 Of The Emeryville Municipal Code Regarding Violations: CEQA Determination: Exempt Pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(3)

WHEREAS, it is in the best interest of the City of Emeryville to require construction, demolition, and certain alteration projects to recycle or reuse materials in order to reduce landfill and climate change impacts; and

WHEREAS, the City of Emeryville General Plan contains numerous objectives and policies to support the reduction of construction and demolition waste; and

WHEREAS, goals for reducing waste to landfills are also included in the City’s Climate Action Plan, and;

WHEREAS, a goal to reduce waste to landfills is included in the City’s Franchise Agreement with Waste Management of Alameda County, and;

WHEREAS, 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 of landfilled materials generated in Alameda County by 75% by the year 2010; and

WHEREAS, reusing and recycling C&D debris is essential to further the City’s efforts to reduce waste and comply with California’s Integrated Waste Management Act, AB 939 of 1989, and California’s Mandatory Commercial Recycling (MCR) Law, AB 341 of 2011 and Measure D goals; and

WHEREAS, in 2000 and in 2014, Construction and Demolition (“C&D”) debris constituted approximately 21% of the materials landfilled in Alameda County and the State of California, according to studies, and a similarly large portion of the waste stream in the City. These materials have significant potential for waste reduction and recycling; and

WHEREAS, the State of California through its 2016 Green Building Standards Code, effective January 1, 2017, requires that new construction, commercial renovations and residential alteration projects divert 100% of all Portland cement concrete and asphalt concrete and 65% of all other discarded materials, but does not set similar goals for demolition, nor does it exclude Alternative Daily Cover from diversion calculations; and

WHEREAS, except in unusual circumstances, it is feasible to divert 100% of all Portland cement concrete and asphalt concrete and an average of at least 65% of all remaining C&D debris from demolition projects; and

WHEREAS, it is feasible to achieve these diversion rates without allowing Alternative Daily Cover (ADC) to be included in the diversion calculation, thereby achieving a higher actual diversion rate, exceeding that required by Cal Green Building Code 2016 which is silent on ADC; and

WHEREAS, to meet the need for accelerated climate action, the City of Emeryville wishes to increase requirements (reduce materials going to landfills) beyond those in the 2016 Green Building Code; and

WHEREAS, C&D debris waste reduction and recycling have been proven to reduce the amount of such material sent to landfill, increase site and worker safety, and be cost effective; and

WHEREAS, StopWaste, also called the Alameda County Waste Management Authority, a public agency, has developed guidelines for waste management and reduction which are consistent with the objectives and policies of the Emeryville General Plan and that have been officially adopted by many cities and counties in the Bay Area as the standard model within their communities; now, therefore be it resolved

THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE: PURPOSE AND INTENT. The purpose of this Ordinance is to supplement the provisions of the California Integrated Waste Management Act of 1989 (Cal. Public Resources Code, Section 40000, et seq.), the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D), the California Green Building Standards Code (CALGreen 2016) (adopted via Ordinance No. 16-008), and the City of Emeryville's landfill diversion goals, as stated in the Franchise Agreement with Waste Management of Alameda County, of less than 8000 tons going to landfill. The City has identified construction and demolition debris as a significant target for reduction and recycling. The intent of this Ordinance is to divert building materials from landfills, and process and return the materials into the economic mainstream, thereby conserving natural resources and stimulating markets for recycled and salvaged materials.

In addition this Ordinance shall amend Chapter 2 of Title 1 of the Emeryville Municipal Code regarding penalties for violations of the new Chapter 26 of Title 8 of the Emeryville Municipal Code.

SECTION TWO. ADDING CHAPTER 26 TO TITLE 8 OF THE EMERYVILLE MUNICIPAL CODE. Chapter 26, "Construction, Demolition, and Certain Alteration Projects", is hereby added to Title 8 of the Emeryville Municipal Code to read as follows:

CHAPTER 26 CONSTRUCTION AND DEMOLITION WASTE REQUIREMENTS

Sections:

- 8-26.01** **Definitions.**
- 8-26.02** **Applicability of Chapter**
- 8-26.03** **Submission of a Waste Management Plan**
- 8-26.04** **Review of the Waste Management Plan**
- 8-26.05** **Compliance with the Waste Management Plan**

8-26.06 Infeasible Exemption

8-26.07 Appeal

8-26.01 Definitions

As used in this Chapter, certain words and phrases are defined as follows:

- a) "Alteration" or "Alter" shall mean "Any Construction or Alteration to an existing structure other than repair, for the purpose of maintenance or addition."
- b) "Alternative Daily Cover" (ADC) shall mean cover material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.
- c) "Applicant" or his/her designee, 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 the City for the applicable permits to undertake any Construction, Demolition, or Alteration project within the City.
- d) "California Green Building Standards Code" and "CAL Green" (Title 24, Part 11) refer to the coded section of the California Building Code currently in effect.
- e) "Conditioned Area/Volume/Size" means the area/volume/size of a building which is temperature controlled through heating and/or cooling systems.
- f) "Construction" means the building of any facility or structure or any portion thereof including any Alteration of an existing facility or structure.
- g) "Construction Costs" means the dollar valuation of a City Project as determined by the City of Emeryville Building Division.
- h) "Construction and Demolition Debris" means used or discarded materials removed from premises during Construction or Alteration of a structure resulting from Construction, remodeling, repair, or Demolition operations on any pavement, house, commercial building, or other structure.
- i) "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 identified in a Waste Management Plan.
- j) "Covered Project" shall include:
 - (1) All new Construction (commercial and residential) projects; and

- (2) All Demolition projects (commercial and residential); and
 - (3) All residential remodeling or Alteration projects that increase the area, volume or size of conditioned or livable space of the building
 - (4) Nonresidential building additions and Alterations for which a building permit is required, except those permit types listed under 8-26.01
- k) "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 requiring a demolition permit.
- l) "Divert" means to use material for any purpose other than disposal in a landfill or transformation facility (incinerator or the like).
- m) "Noncovered Project" shall include mechanical, electrical, plumbing, awning, racks, windows, doors antennas, signage and other permitted projects that are expected to generate waste measuring 2 lbs. or less per square foot of project area.
- n) "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.
- o) "Reuse" means further or repeated use of Construction and Demolition Debris.
- p) "Salvage" means the controlled removal of Construction and Demolition Debris from a permitted building or Demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.
- q) "Universal Waste" refers to products subject to regulation such as batteries, mercury-containing equipment, fluorescent bulbs and ballast, and other items included in Title 22 of California Code of Regulations.
- r) "WMP" or "Waste Management Plan" means a completed WMP form, approved by the City for the purpose of compliance with this Chapter, submitted by the Applicant for any Covered Project. The WMP identifies materials to be and ultimately removed from the project site, quantifies the materials by weight, with attached documentation, and reflects required diversion as specified in this ordinance
- s) "WMP Compliance Official" means the staff person(s) designated and authorized by the City Manager as being responsible for implementing this Chapter.

8-26.02 Applicability of Chapter

- a) Covered Projects: All Covered Projects shall comply with the requirements of this Chapter.
- b) Noncovered Projects: Noncovered Projects shall be encouraged to divert at least sixty-five percent (65%) project-related Construction and Demolition Debris.
- c) City Projects: All City projects shall be considered Covered Projects for the purposes of this Chapter, excepting City projects for roadwork and landscaping, which shall be considered Non-Covered Projects. City owned Covered Projects shall submit a Waste Management Plan to the WMP Compliance Official prior to beginning any Construction or Demolition activities and shall be subject to all applicable provisions of this Chapter.

8-26.03 Submission of a Waste Management Plan

- a) WMP Forms: Applicants for building or Demolition permits involving any Covered Project shall complete and submit a WMP, on a WMP form approved by the City Building Official 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 types of Construction and Demolition Debris or materials to be generated;
 - 2. the vendor or facility that the Applicant proposes to use to collect or receive that material;
 - 3. Applicant contact and project information.
- b) 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 landfilling.
- c) Universal Waste: Non-residential Alterations and additions to building or tenant space that meets threshold as above are required to verify that Universal Waste items such as fluorescent lamps and ballast and mercury containing thermostats as well as other California prohibited Universal Waste materials are disposed of properly and are Diverted from landfills. A list of prohibited Universal Waste materials shall be included in the Construction documents.
- d) Waste Management Company: Utilize a waste management company that can provide verifiable documentation that the percentage of Construction and Demolition Debris is Diverted from the landfill complies with this ordinance.

8-26.04 Review of the Waste Management Plan

- a) Approval: Notwithstanding any other provision of this Code, no building or demolition permit shall be issued for any Covered Project unless and until the WMP Compliance Official has approved the WMP. Approval shall not be required, however, where an emergency Demolition is required to protect public health or safety. 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. That the WMP provides all of the information set forth in 8-26.04 of this Chapter; and
 2. That the WMP indicates Diversion of:
 - a. at least one hundred percent (100%) of the Portland cement concrete and asphalt concrete, and non-hazardous excavated soil and land clearing debris
 - b. correct management of Universal Waste (commercial additions of 1000 sq. ft. or greater, or Alterations with permit valuation of \$200,000 or greater), and
 - c. sixty-five percent (65%) of all remaining Construction and Demolition Debris, excluding Alternative Daily Cover (ADC).

If the WMP Compliance Official determines that these conditions have been met, he or she shall mark the WMP "Approved", return a copy of the WMP to the Applicant, and notify the Building Division that the WMP has been approved.

- b) Nonapproval: If the WMP Compliance Official determines that the WMP is incomplete or fails to indicate that one hundred percent (100%) of all Portland cement concrete and asphalt concrete and at least sixty-five percent (65%) of all remaining Construction and Demolition Debris generated by the Project will be reused or recycled (excluding ADC), he or she shall either:
1. Return the WMP to the Applicant marked "Denied", or "rejected" including a statement of reasons, and so notify the Building Division which shall then immediately stop processing the building or Demolition permit application, or
 2. Return the WMP to the Applicant requiring further explanation.

8-26.05 Compliance with the Waste Management Plan

- a) Documentation: Within 30 days after the completion of any Covered 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 one hundred percent (100%) of all Portland cement concrete and asphalt concrete, non-hazardous excavated soil and land-clearing debris, correct management of universal waste (commercial projects 1000 sq. ft. or greater), and at least sixty-five percent (65%) of the total Construction and Demolition Debris generated by the project via reuse or recycling, excluding

ADC, unless the Applicant has been granted an Infeasibility Exemption pursuant to Section 8-26.06 of this Ordinance, 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. Weight tickets from each 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 landfilled; and
3. Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this Chapter.

b) Weighing of Wastes: Applicants shall make reasonable efforts to ensure that all Construction and Demolition Debris diverted or landfilled are measured and recorded using the most accurate method of measurement available. To the extent practical, all Construction and Demolition Debris shall be weighed by measurement on 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. 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 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 inform 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 Construction and Demolition Debris landfilled, the size of the Project, and the documented efforts of the Applicant to divert Construction and Demolition Debris.
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 8-26.05 within the required time period, the Applicant will be considered to be in noncompliance with this Chapter.

8-26.06 Exemption for Infeasibility

- 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 exemption at the time that he or she submits the WMP required under Section 8-26.03 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, the WMP 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 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 of a Covered Project 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 Infeasible Exemption" and shall notify the Building Department that the WMP has been approved.
- 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 8-26.03 of this Chapter. If the Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 8-26.03 of this Chapter, the WMP Compliance Official shall deny the WMP in accordance with Sections 8-26.04 or 8-26.05 of this Chapter.

8-26.07 Appeal

- a) Any applicant or person may appeal to the City Manager the determination of the Compliance Official regarding (1) the granting or denial of an exemption pursuant to Section 8-26.06, or (2) compliance with the provisions of Sections 8-26.04 or 8-26.05.
- b) Any appeal to the City Manager must be filed in writing with the City Clerk within ten (10) calendar days of the determination by the Compliance Official. The appeal shall state with reasonable particularity and specificity the alleged error or basis

for appeal and be supplemented with all supporting documentation the appellant desires the City Manager to consider. The City Manager may request additional written or oral information from the applicant or the Compliance Official. The City Manager shall issue a written determination within thirty (30) calendar days after receipt of the appeal. The City Manager's determination shall be final.

8-26.08 Enforcement

Violation of any provision of this Chapter due to the applicant's failure to dispose of Construction, Demolition, or Alteration debris or materials accordance with the approved Diversion Requirement, including the "Approved" WMP and conditions of approval of the applicable land use permit, shall be punishable as an infraction for each separate violation as provided in Chapter 2 of Title 1 of the Emeryville Municipal Code.

SECTION THREE. AMENDING SECTION 1-2.01(f) OF CHAPTER 2 OF TITLE 1

Section 1-2.01(f) of Chapter 2 of Title 1 of the Emeryville Municipal Code is hereby amended to add the following:

1-2.01. Violations Misdemeanors or Infractions.

- (f) Any person violating any of the following provisions or failing to comply with any of the following provisions of this Code shall be guilty of an infraction:

Title	Chapter	Article	Section
<u>8</u>	<u>26</u>		<u>.02, .03, .04 and .05</u>

SECTION FOUR. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that there is no possibility that the proposed ordinance will have a significant effect on the environment. This action is further exempt from the definition of a "Project" subject to the requirements of CEQA as set forth in Section 15378(b)(3) in that this Ordinance concerns general policy and procedure making.

SECTION FIVE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be

invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION SIX. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

SECTION SEVEN. CODIFICATION

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six and Seven shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, September 19, 2017 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, October 3, 2017 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST:

MAYOR



CITY CLERK

CITY ATTORNEY