

Endorsed by the Alameda County Waste Management Board: November 17, 1999

Modified October 2001 and October 2006

**CONSTRUCTION AND DEMOLITION DEBRIS
MODEL ORDINANCE**

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF ____ AMENDING THE
MUNICIPAL CODE BY ADDING A NEW ARTICLE XX
(REQUIREMENT TO SUBMIT AND COMPLY WITH A WASTE MANAGEMENT
PLAN FOR CERTAIN CONSTRUCTION, DEMOLITION, AND RENOVATION
PROJECTS WITHIN THE CITY OF ____)**

SECTION 1 (Enactment):

The City Council does hereby enact this ORDINANCE No. ____ in full, amending the _____ Municipal Code by adding a new Article to the _____ Municipal Code which shall read as follows:

**ARTICLE XX. REQUIREMENT TO SUBMIT AND COMPLY WITH A WASTE
MANAGEMENT PLAN FOR CERTAIN CONSTRUCTION,
DEMOLITION, AND RENOVATION PROJECTS WITHIN THE
CITY OF ____.**

XX-1 FINDINGS

a. The City 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 City finds that every city and county in California, including the City, could face fines up to \$10,000 a day for not meeting the above mandated goal.

c. The City 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 landfilled of materials generated in Alameda County by 75% by the year 2010.

d. The City finds that in 2000, Construction and Demolition (C&D) debris constituted approximately 21% of the materials landfilled in Alameda County and a similarly large portion of the waste stream in the City. These materials have significant potential for waste reduction and recycling.

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

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

h. **[Optional: where performance security is required]** The City finds that, to ensure compliance with this Article and to ensure that those contractors that comply with this Article are not placed at a competitive disadvantage, it is necessary to impose a Performance Security requirement.

XX-2 DEFINITIONS

For the purposes of this Article XX, the following definitions shall apply:

a. “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 applies to the City for the applicable permits to undertake any construction, demolition, or renovation project within the City.

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

c. “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.

d. “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 Management Plan.

e. “Covered Project” shall have the meaning set forth in Section 3(a) of this Article.

f. “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.

g. “Divert” means to use material for any purpose other than disposal in a landfill or transformation facility.

h. “Diversion Requirement” means the diversion of 100% of all portland cement

concrete and asphalt concrete and at least fifty (50) percent of the remaining Construction and Demolition Debris generated by a Project via reuse or recycling, unless the Applicant has been granted an Impossibility Exemption pursuant to Section 8 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.

i. “Noncovered Project” shall have the meaning set forth in Section 3(b) of this Article.

j. “Performance Security” means any performance bond, surety bond, money order, letter of credit, or certificate of deposit submitted to the City pursuant to Section 5 of this Article.

k. “Project” means any activity involving construction, demolition, or renovation, and which requires issuance of a permit from the City.

l. “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.

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

n. “Reuse” means further or repeated use of Construction or Demolition Debris.

o. “Salvage” means 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.

p. “Waste Management Plan” means a completed WMP form, approved by the City for the purpose of compliance with this Article, submitted by the Applicant for any Covered or

Noncovered Project.

q. “WMP Compliance Official” means the designated staff person(s) authorized and responsible for implementing this Article.

XX-3 THRESHOLD FOR COVERED PROJECTS

OPTION 1 (Total \$ value threshold):

a. Covered Projects: All construction, and renovation projects within the City the total costs of which are, or are projected to be, greater than or equal to \$50,000, and all demolition projects within the City the total costs of which are, or are projected to be, greater than \$25,000 (“Covered Projects”) shall comply with this Article XX. Failure to comply with any of the terms of this Article XX shall subject the Project Applicant to the full range of enforcement mechanisms set forth in Section XX-10, below.

b. **[Optional:]** Noncovered Projects: Applicants for construction, demolition, and renovation projects within the City whose total costs are less than \$50,000 that are not Covered Projects (“Noncovered Projects”) shall be encouraged to divert at least fifty (50) percent of all project-related construction and demolition debris.

c. City-Sponsored Projects: All City-sponsored construction, demolition, and renovation Projects, [regardless of cost] or [whose total costs are equal to or greater than [\$50,000] for construction or renovation, or [\$25,000] for demolition activities, shall be considered “Covered Projects” for the purposes of this Article XX and 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 Article XX.]

d. 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 issued for a Covered Project.

OPTION 2: (Total square footage threshold):

a. Covered Projects: All construction, demolition, and renovation projects within the City that are 1,000 square feet or greater (“Covered Projects”) shall comply with this Article. Failure to comply with any of the terms of this Article shall subject the Project Applicant to the full range of enforcement mechanisms set forth in Section XX-10, below.

b. **[Optional:]** Noncovered Projects: Applicants for construction, demolition, and renovation projects within the City under 1,000 square feet (“Noncovered Projects”) shall be encouraged to divert at least fifty (50) percent of all project-related construction and demolition debris.

c. City-Sponsored Projects: All City-sponsored construction, demolition, and renovation Projects, [regardless of size] or [that are [1,000] square feet or greater], shall be considered “Covered Projects” for the purposes of this Article XX and shall submit a Waste Management Plan to the WMP Compliance Officer prior to beginning any construction or demolition activities and shall be subject to all applicable provisions of the Article XX.]

d. 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 issued for a Covered Project.

XX-4 SUBMISSION OF WASTE MANAGEMENT PLAN

a. WMP Forms: Applicants for building or demolition permits involving any Covered Project shall complete and submit a Waste Management Plan (“WMP”), on a WMP form approved by the City 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 landfilled.

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 City for this purpose.

c. Deconstruction: **[Optional:]** 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 available for salvage prior to landfilling. Applicant should refer to local Builders’ Guides for Reuse and Recycling.

XX-5 [OPTIONAL] PERFORMANCE SECURITY

The Applicant for any Covered Project shall submit with the WMP a Performance Security. The amount of the Performance Security shall be calculated as the lesser of three (3) percent of total Project cost or \$10,000. Acceptable forms of Performance Security include the following: Performance Bonds; Surety Bonds; Money Orders; Letters of Credit; 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.

XX-6 REVIEW OF WMP

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 safety¹. 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 4 of this Article;
- (2) the WMP indicates that at least one hundred (100) percent of the portland cement concrete and asphalt concrete and fifty (50) percent of all remaining C&D debris generated by the Project will be diverted; and
- (3) the Applicant has submitted an appropriate Performance Security in compliance with Section 5 of this Article XX.

¹ Cities may wish to cross-reference their existing disaster/emergency demolition procedures.

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 [Building Department] that the WMP has been approved.

b. Nonapproval: If the WMP Compliance Official determines that the WMP is incomplete or fails to indicate that 100% of all portland cement concrete and asphalt concrete and at least fifty (50) percent of all remaining 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 [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.

XX-7 COMPLIANCE WITH WMP

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 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 Impossibility Exemption pursuant to Section 8 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) 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 landfilled;

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

b. Weighing of Wastes: Applicants shall make reasonable efforts to ensure that all C&D debris diverted or landfilled 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 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 Article XX. In making this determination, the WMP Compliance Official shall consider the availability of markets for the C&D debris landfilled, 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 Article XX, 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 City, and shall be used for the purposes of promoting recycling within the City.

(3) Noncompliance: If the WMP Compliance Official determines that the Applicant has not made a good faith effort to comply with this Article XX, 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 City. All forfeited Performance Securities shall be used for the purposes of promoting recycling within the City.

XX-8 INFEASIBLE EXEMPTION

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 4 of this Article XX. 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 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 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 4 of this Article XX. If the Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 4 of this Article XX, the WMP Compliance Official shall deny the WMP in accordance with Section 6(b) of this Article XX.

XX-9 APPEAL

[Depending upon its existing procedures and the department responsible for making WMP determinations, cities may want to provide for appeals of any determinations made under this Article

pursuant to their existing procedures. Determinations subject to appeal would include, but not necessarily be 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.]

XX-10 ENFORCEMENT

a. Violation of any provision of this Article XX may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City 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 Article XX.

b. Violation of any provision of this Article XX shall constitute an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year, and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate infraction for each day on which a violation occurs. 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 landfilled, the violation shall be deemed to have ceased after a period of ten days. The City shall recover costs and attorneys' fees incurred in connection with enforcement of this Article.

c. Enforcement pursuant to this section shall be undertaken by the City through its Planning Director and the City Attorney.

SECTION 2 (SEVERABILITY)

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article XX, 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 XX 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 XX 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 provision of this Article are declared to be severable.

SECTION 3 (Effective Date)

This Article XX shall take effect thirty (30) days after its passage.

SECTION 4 (Notice)

[Jurisdictions should insert the relevant notice requirements here]

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:
