

ORDINANCE NO. 09-004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE ADDING CHAPTER 19, CONSTRUCTION WASTE AND DEMOLITION 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

WHEREAS, it is in the best interest of the City of Emeryville to require construction, demolition, and certain renovation 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, 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; 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 landfilled of materials generated in Alameda County by 75% by the year 2010; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; 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 fifty (50) percent of all remaining C&D debris from construction, demolition, and renovation projects;

WHEREAS, StopWaste.Org, the Alameda County Waste Management Authority, a public agency, has developed guidelines for waste management and reduction that are consistent with the objectives and policies of the Emeryville General Plan and which 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 and intent of this ordinance is to add Chapter 19 to Title 8 of the Emeryville Municipal Code, to add the requirement to submit and comply with a waste management plan for certain construction demolition, and renovation projects within the City of Emeryville.

SECTION TWO. ADDING CHAPTER 19 TO TITLE 8 OF THE EMERYVILLE MUNICIPAL CODE. Chapter 19, Construction, Demolition, and Certain Renovation Projects, is hereby added to Title 8 of the Emeryville Municipal Code to read as follows:

CHAPTER 19. CONSTRUCTION WASTE AND DEMOLITION REQUIREMENTS

Sections:

- 8-19.01 Definitions.**
- 8-19.02 Thresholds for Covered Projects**
- 8-19.03 Submission of a Waste Management Plan**
- 8-19.04 Review of the Waste Management Plan**
- 8-19.05 Compliance with the Waste Management Plan**
- 8-19.06 Infeasible Exemption**
- 8-19.07 Appeal**

8-19.01 Definitions

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

- 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 Costs” means the dollar valuation of a City Project as determined by the City of Emeryville Building Division.

- d) “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.
- e) “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.
- f) “Covered Project” shall have the meaning set forth in Section 8-19.02(a) of this Chapter.
- g) “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.
- h) “Divert” means to use material for any purpose other than disposal in a landfill or transformation facility.
- i) “Diversion Requirement” means the diversion of one hundred percent (100%) of all portland cement concrete and asphalt concrete and at least fifty percent (50%) of the remaining Construction and Demolition Debris generated by a Project via reuse or recycling, unless the Applicant has been granted an Infeasibility Exemption pursuant to Section 8-19.06 of this Chapter, in which case the Diversion Requirement shall be the maximum feasible diversion rate established by the WMP Compliance Official for the Project.
- j) “Noncovered Project” shall have the meaning set forth in Section 8-19.02(b) of this Chapter.
- 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 and Demolition Debris.

- o) “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.
- p) “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 or Noncovered Project.
- q) “WMP Compliance Official” means the staff person(s) designated and authorized by the City Manager as being responsible for implementing this Chapter.

8-19.02 Thresholds for Covered Projects

- a) Covered Projects: The following projects are considered “Covered Projects” and shall comply with the requirements of this Chapter:
 - a. Construction and Renovation Projects within the City where the total Construction Costs of which are, or are projected to be, greater than or equal to \$50,000; or
 - b. All Demolition Projects within the City; or
 - c. Construction, Demolition, and Renovation Projects within the City that are 1,000 square feet or greater in affected area.
- b) Noncovered Projects: Applicants for Construction, Demolition, and Renovation projects within the City that are not Covered Projects (“Noncovered Projects”) shall be encouraged to divert at least fifty percent (50%) project-related Construction and Demolition Debris.
- c) City Projects: All City building Projects including Construction, Demolition, and Renovation Projects, shall be considered “Covered Projects” for the purposes of this Chapter 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 this Chapter. All other City projects such as roadwork and landscaping projects shall be exempted from the requirements of this ordinance.
- d) Compliance as a Condition of Approval: Compliance with the provisions of this Chapter shall be listed as a condition of approval on any building or demolition permit issued for a Covered Project.

8-19.03 Submission of a Waste Management Plan

- a) WMP Forms: Applicants for building or demolition permits involving any Covered Project shall complete and submit a 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 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. the estimated Construction Costs of the project;
 4. the estimated square footage of the project; and
 5. Applicant contact and project information.
- b) Calculating Volume and Weight of Debris: In estimating the volume or weight of materials identified in the post-construction/demolition WMP, the Applicant shall use the standardized conversion rates approved by the City for this purpose.
- c) 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.

8-19.04 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. the WMP provides all of the information set forth in 8-19.04 of this Chapter; and
 2. the WMP indicates that at least one hundred percent (100%) of the portland cement concrete and asphalt concrete and fifty percent (50%) of all remaining Construction and Demolition Debris generated by the Project will be diverted;

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 Planning and 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 one hundred percent (100%) of all portland cement concrete and asphalt concrete and at least fifty percent (50%) of all remaining Construction and Demolition 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 Planning and 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.

8-19.05 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 and at least fifty percent (50%) of the total Construction and Demolition Debris generated by the Project via reuse or recycling, unless the Applicant has been granted an Infeasibility Exemption pursuant to Section 8-19.06 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. 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; 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 8-19.05 within the required time period, the Applicant will be considered to be in noncompliance with this Chapter.

8-19.06 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 8-19.03 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 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 8-19.03 of this Chapter. If the Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 8-19.03 of this Chapter, the WMP Compliance Official shall deny the WMP in accordance with Sections 8-19.04 or 8-19.05 of this Chapter.

8-19.07 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 8-19.06, or (2) compliance with the provisions of Sections 8-19.04 or 8-19.05.
- 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.
- c) The determination of the City Manager may be appealed to the City Council in accordance with Chapter 4 of Title 1 of the Emeryville Municipal Code.

8-19.08 Enforcement

Violation of any provision of this Chapter due to the applicant's failure to dispose of construction, demolition, or renovation 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 read as follows. Additions are indicated in underlined type. Provisions not explicitly listed are unchanged.

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>19</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, June 2, 2009 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, June 16, 2009 by the following vote:

AYES: (5) Mayor Kassis, Vice Mayor Bukowski and Councilmembers Atkin, Davis and Fricke

NOES: (0) None ABSENT: None

EXCUSED: None ABSTAINED: None



MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



WASTE MANAGEMENT PLAN - Pre-Demolition/ Pre-Construction

Project Address: _____ Square Footage of Project: _____
 Date: _____ Contractor: _____
 Contact: _____ Title: _____
 Phone: _____ Email: _____
 Project Type: _____ SF Residential-New _____ Commercial-TI _____ Multifamily
 _____ SF Residential-Remodel _____ Commercial-New _____

NOTE – If you are using a Waste Management of Alameda County (WMAC) Roll-off debris container, check here: _____ (Skip rest of form.)

Specify whether materials will be reused, recycled or disposed by completing the table below. You must recycle 100% of concrete and asphalt and at least 50% of all other waste generated. Check the designated box and provide the name of each facility or service provider to be used. If the materials are to be reused on site, describe under the facilities/service providers column. For example, wood waste chipped on site for mulch in plant beds. Salvaged materials from deconstruction should be designated as reuse.

Material	Reuse	Recycle	Dispose	Facility/Service Provider to be used*	Location of Facility (City)
Asphalt			Not Allowed		
Brick					
Cardboard					
Carpet					
Concrete			Not Allowed		
Dirt/Clean Fill					
Dry Wall					
Metal					
Mixed Debris					
Pallets					
Plant Debris					
Plastics					
Roofing – asphalt composition shingle, tile, wood shake, tar or gravel					
Wood - clean					
Wood - treated					
Other:					

*For assistance in recovering materials at the jobsite, visit the following websites for a Builders Guide to Reuse and Recycling: www.stopwaste.org/docs/buildersguide-05.pdf or call 1-877-StopWaste) or Ask an Expert: 510-845-0472 x2 or www.BuildItGreen.org



WASTE MANAGEMENT PLAN - Post - Demolition / Post - Construction

Project Address: _____ Square Footage of Project: _____
 Date: _____ Contractor: _____
 Contact: _____ Title: _____
 Phone: _____ Email: _____
 Project Type: _____ SF Residential-New _____ SF Residential-Remodel _____ Commercial-New _____ Commercial-TI _____ Multifamily _____

Identify which materials were reused, recycled or disposed by completing the table below. Check the designated box and provide the name of each facility or service provider and weight of materials. If the materials were reused on site, describe the reuse application under the facilities/service providers column. Salvaged materials from deconstruction should be designated as reuse. **Attach copies of receipts, gate tags, or other verifying documentation.**

Material	Reuse	Recycle	Dispose	Facility/Service Provider	Facility Location (City)	Weight (tons)
Asphalt						
Brick						
Cardboard						
Carpet						
Concrete						
Dirt/Clean Fill						
Dry Wall						
Metal						
Mixed Debris						
Pallets						
Plastics						
Plant Debris						
Roofing - asphalt composition shingle, tile, wood shake, tar or gravel						
Wood - clean						
Wood - treated						
Other:						

MATERIAL GENERATION SUMMARY:

- A. Total tons of materials generated for the project: _____
- B. Total tons of materials disposed (not recycled): _____
- C. Total tons of materials salvaged, reused, or recycled: _____
- D. Percentage of materials recycled/reused (divide C by A): _____ %