

ORDINANCE NO.#,###-N.S.

ADDING CHAPTER 19.24, CONSTRUCTION AND DEMOLITION (“C&D”) DEBRIS SALVAGE AND RECYCLING, TO THE BERKELEY MUNICIPAL CODE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 19.24 is added to the Berkeley Municipal Code to read as follows:

Chapter 19.24

CONSTRUCTION AND DEMOLITION DEBRIS SALVAGE AND RECYCLING

Sections:

19.24.010 Findings.

19.24.020 Purpose.

19.24.030 Definitions.

19.24.040 Applicability.

19.24.050 Deconstruction and Salvage Requirement.

19.24.060 Submittal and Approval of Waste Diversion Plan.

19.24.070 Submittal and Approval of Waste Diversion Report.

19.24.080 Violations.

19.24.010 Findings

A. 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, or face fines of up to \$10,000 per day.

B. 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 land-filled of materials generated in Alameda County by 75% by the year 2010.

C. In 2005 the City adopted a Zero-Waste Resolution 62,849 N.S. with a goal of achieving Zero Waste by 2010 to 2020. The concept Zero Waste prioritizes the highest and best use of materials, favoring reuse over recycling and recycling over landfilling, and stipulates that the producer of waste is responsible for its diversion.

D. Construction and Demolition (C&D) debris constituted approximately 20 percent of the materials landfilled in Alameda County and 15 percent of the waste stream in the City. These materials have significant potential for waste reduction, recycling and salvage.

E. Salvage and recycling of C&D debris is essential to further the City’s Zero Waste Goal and comply with AB 939 and Measure D.

F. Except in unusual circumstances, it is feasible to divert an average of one hundred (100) percent of concrete and asphalt and fifty (50) percent of remaining C&D debris from construction, demolition, and renovation projects through salvage for reuse and recycling.

G. Compliance with the provisions of this chapter shall be required prior to the issuance of a building or demolition permit for a Covered Project. To ensure compliance with this chapter and to ensure that applicants that comply with this chapter are not placed at a competitive disadvantage, it is necessary to impose civil penalties for noncompliance.

19.24.020 Purpose.

The purpose of the Construction and Demolition Debris Salvage and Recycling Ordinance is to reduce the amount of waste generated in the City that is going to landfills, in order to help the City comply with AB 939 and Measure D and meet its Zero Waste goals, and to encourage the highest and best use of construction site materials.

19.24.030 Definitions.

For the purposes of this chapter, 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 chapter for use in estimating the volume or weight of materials identified in a Waste Diversion Plan.

E. "Covered Project" means:

1. Construction and renovation of non-residential building projects with total costs that are, or are projected to be, over \$100,000 in 2006 dollars (adjusted for inflation);

2. Demolition projects with total costs that are, or are projected to be, over \$50,000 in 2006 dollars (adjusted for inflation); and

3. Construction and renovation of single family residential building projects with total costs that are, or are projected to be, over \$100,000 in 2006 dollars (adjusted for inflation), after certification under Section 19.24.040.

F. "Deconstruction" means the process of dismantling a building or structure in order to salvage components for reuse and recycling.

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.

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 of concrete and asphalt 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 a diversion requirement adjustment, pursuant to Section 19.24.060 of this chapter, in which case the Diversion Requirement shall be the maximum feasible diversion rate for the project established by the Official.

J. "Exempt Project" means any demolition project undertaken because the City or other public agency has determined that the demolition is necessary to protect public health and safety.

K. "Manager" means the City Manager or his or her designee.

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

M. "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.

N. "Renovation" means any change, addition, or modification in an existing structure.

O. "Reuse" means the use in the same or similar form as it was produced, of a material that might otherwise be discarded.

P. "Salvageable Materials" means materials that can be recovered for reuse.

Q. "Waste Diversion Plan" means a completed WDP form, approved by the City for the purpose of compliance with this chapter, submitted by the Applicant for any Covered Project.

R. "Waste Diversion Report" means an approved waste diversion form, completed by the owner. The Waste Management Report shall identify the amount of each material generated from the Covered Project, how each material was managed, and the name of each facility or service provider used to manage materials, along with receipts from facility or service provider.

S. "Official" means the Waste Diversion Compliance Official designated by the Public Works Director.

19.24.040 Applicability.

Upon completion of upgrades to the Berkeley transfer station to allow for construction debris recovery, the Director of Public Works shall provide written certification of such completion to the Official. Thirty days after such certification, this chapter shall apply to construction and renovation of residential building projects with total costs that are, or are projected to be, over \$100,000 in 2006 dollars (adjusted for inflation).

19.24.050 Deconstruction and Salvage Requirement.

Applicants for Covered Projects shall make Salvageable Materials from any Covered Project available for reuse prior to demolition. It shall be the responsibility of the owner, the general contractor and all subcontractors to notify deconstruction/salvage companies and to recover the maximum amount of salvageable designated recyclable and reusable materials prior to demolition. Recovered and salvaged designated recyclable and reusable materials from the deconstruction phase shall be counted in meeting the diversion requirements of this chapter. Recovered or salvaged materials may be given or sold on or from the premises at which they were recovered or salvaged, or may be removed to reuse warehouse facilities for storage or sale. Title to reusable or recyclable materials forwarded to the operator of a recycling facility, landfill, or other disposal facility will transfer to the service provider upon departure of the materials from the site.

19.24.060 Submittal and Approval of Waste Diversion Plan.

A. Applicants for building or demolition permits involving any Covered Project shall complete and submit a Waste Diversion Plan (WDP), on a WDP form approved by the City for this purpose. The completed WDP shall indicate all of the following:

1. A breakdown of the types of construction and demolition materials anticipated at the site.
2. A description of management methods planned to be used for all types of materials (e.g. reuse, recycling or landfilling).

3. The name of all vendors or facilities that the Applicant proposes to use to collect or receive materials and anticipated recovery rates.

4. An acknowledgement that the owner understands the diversion requirements of this Ordinance.

B. Prior to issuance of a building permit, an Applicant shall submit and obtain approval for a WDP to the Official.

C. If an owner of a covered project experiences circumstances that makes it infeasible to comply with the diversion requirement, the owner may apply in writing for an adjustment. Increased cost to the owner is generally not a sufficient basis for an adjustment. If the Official determines that is infeasible for the owner to meet the diversion and salvage requirements, the Official may adjust the percent of diversion that is required. The Official shall notify the owner of any decision on applications for adjustments under this chapter.

19.24.070 Submittal and Approval of Waste Diversion Report.

A. Documentation. Upon completion of the construction, renovation and demolition activities, the Applicant shall submit a Waste Diversion Report documenting that the diversion and salvage requirements have been met. Required documentation shall include all of the following:

1. A completed Waste Diversion Report, signed by the owner, indicating the quantity of each material diverted or disposed, consistent with requirements of subsection B;

2. Receipts from the vendor or facility which collected or received each material showing the actual weight or volume of that material;

3. A copy of the previously approved WDP for the Project adding the actual volume or weight of each material diverted and landfilled;

4. Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this chapter.

B. Weighing of debris. The owner shall make reasonable efforts to ensure that all construction and demolition debris diverted or disposed of are measured and recorded using the most accurate methods practicable. To the extent practicable, all construction and demolition debris shall be weighed using 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. The owner shall convert volumetric measurements to weight using standardized conversion factors approved by the Official for this purpose.

C. Determination of Compliance. The Official will review the information submitted under subsection A of this Section to determine whether the Applicant has adequately complied, and will provide a written determination regarding compliance to the owner.

19.24.080 Violations.

A. Violation of this chapter is a misdemeanor punishable as set forth in Chapter 1.20 of this code, but may be charged, in the discretion of the prosecutor, as an infraction.

B. In any action to enforce this chapter the City shall be awarded reasonable attorney's fees and recover its costs of enforcement and court costs.

C. The remedies provided for under this chapter are not exclusive and are in addition to any the City might have under applicable law.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

