

ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY OF HAYWARD
AMENDING CHAPTER 5, ARTICLE 10, OF THE
HAYWARD MUNICIPAL CODE REGARDING
CONSTRUCTION AND DEMOLITION DEBRIS WASTE
REDUCTION AND RECYCLING REQUIREMENTS

THE CITY COUNCIL OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 5, Article 10 of the Hayward Municipal Code is amended to read in full as follows:

ARTICLE 10

CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND
RECYCLING REQUIREMENTS

- 5-10.01 PURPOSE
- 5-10.02 DEFINITIONS
- 5-10.03 THRESHOLDS FOR COVERED PROJECTS
- 5-10.04 NON-COVERED PROJECTS
- 5-10.05 COMPLIANCE
- 5-10.06 SUBMISSION OF WMP
- 5-10.07 REVIEW OF WMP
- 5-10.08 SUBMISSION OF A COMPLETED WMP SUMMARY REPORT
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- 5-10.10 DETERMINATION OF COMPLIANCE
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- 5-10.12 DELIVERY TO VERIFIED OR PROVISIONAL FACILITY REQUIRED
- 5-10.13 QUALIFIED THIRD PARTY ORGANIZATIONS
- 5-10.14 APPEALS
- 5-10.15 PENALTY

SEC. 5-10.01 - PURPOSE.

This Article is adopted in order to supplement the provisions of the California Integrated Waste Management Act of 1989, the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D), the California Green Building Standards Code (CALGreen), and the City of Hayward's landfill diversion goals. The City has identified construction and demolition debris as a significant target for reduction and recycling. The intent of this Article 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.

SEC. 5-10.02 - DEFINITIONS.

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

- a. "Applicant" or his/her designee shall mean any individual, firm, limited liability company, association, partnership, the State, any political subdivision and/or agency of the State, any government agency, municipality, county, city, chartered city or county, school district, community college district, industry, business, public or private corporation or any other entity who applies to the City for permits to undertake any construction, demolition or renovation Project within the City that is subject to this Article.
- b. "California Green Building Standards Code" and "CALGreen" (Title 24, Part 11) refer to the coded section of the California Building Code currently in effect.
- c. "Compliance Officer" means the Director of Utilities & Environmental Services or his/her designee. The Compliance Officer shall be the individual responsible for enforcement of this Article.
- d. "Conditioned Area/Volume/Size" means the area/volume/size of a building which is temperature controlled through heating and/or cooling systems.
- e. "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.
- f. "Construction and Demolition Debris", "C&D Debris" and "Construction Debris" means 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.
- g. "Covered Project" means a Project that meets the threshold requirements described in Section 5-10.03.
- h. "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.

- i. "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.
- j. "Diversion Attainment" means the diversion of one hundred percent (100%) of the asphalt, concrete and similar material, and at least sixty-five percent (65%), by weight, of the total of all other C&D Debris generated by a Covered Project or the minimum recycling rate required by CALGreen (whichever is higher) effective at the time of Covered Project submittal.
- k. "Facility-Average Recycling Rate" means the rate (the percentage of overall incoming material) at which a recycling facility is able to Divert C&D Debris from the landfill.
- l. "Hearing Officer" means the City Manager or his/her designee.
- m. "Mixed C&D Debris" means a mixture of different types of C&D Debris, which may also contain solid waste.
- n. "Mixed-Recovery Facility" refers to a facility that receives and separates Mixed C&D Debris materials in an effort to Divert recyclable materials.
- o. "Project" means any activity which requires an application for a building permit, demolition permit, encroachment permit or other similar permit from the City.
- p. "Provisional Facility" refers to a Mixed-Recovery Facility that is in the process of becoming a Verified Facility. Such facility must be able to provide written documentation showing that the facility is making a good-faith effort, such as through registration with the Qualified Third Party Organization, to become a Verified Facility. A facility may be designated as a Provisional Facility for no more than 12 months.
- q. "Qualified Third Party Organization" refers to an organization that certifies the Facility-Average Diversion Rate of Mixed-Recovery Facilities. Minimum certification requirements are described in Section 5-10.13.
- r. "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.
- s. "Renovation" means any change, addition or modification in an existing structure or improvement.
- t. "Reuse" means further or repeated use of Construction or Demolition Debris in the same or different form.
- u. "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.
- v. "Source Separated" means recyclables that have been segregated from solid waste, by or for the generator, on the premises where they were generated, for handling different from that of solid waste.

- w. "Targeted Materials" means the C&D Debris listed in the WMP that could potentially be reused, recycled or salvaged.
- x. "Third Party Verification" refers to the process by which the Qualified Third Party Organization reviews and verifies the Facility-Average Diversion Rates of the Mixed-Recovery Facility through a certification program that meets the minimum requirements described in Section 5-10.13.
- y. "Verified Facility" refers to a Mixed-Recovery Facility that has successfully completed Third Party Verification.
- z. "Waste Management Plan" and "WMP" means the completed plan approved by the City for the purpose of assuring compliance with this Article submitted by the Applicant for any Covered or non-covered Project.
- aa. "WMP Summary Report" means the report containing the documentation described in Section 5-10.08 to be submitted to the Compliance Officer at the conclusion of any Covered Project.

SEC. 5-10.03 - THRESHOLDS FOR COVERED PROJECTS.

The provisions of this Article shall apply to the following Projects:

- a. New Residential and Nonresidential buildings;
- b. Demolition of any Residential or Nonresidential building;
- c. Residential buildings where the addition or alteration:
 - 1. has a permit valuation in excess of seventy-five thousand dollars (\$75,000.00) as determined by the City's Building Official or designee; or
 - 2. increases the building's Conditioned Area, Volume or Size.
- d. Nonresidential building additions and alterations for which a building permit is required.

SEC. 5-10.04 - NON-COVERED PROJECTS.

Applicants for Projects that do not meet the threshold requirements set forth in Section 5-10.03 shall be encouraged to meet Diversion Attainment described herein.

SEC. 5-10.05 - COMPLIANCE.

Compliance with the provisions of this Article requires submission of a WMP prior to permit approval and submission of a WMP Summary Report to the Compliance Officer prior to final inspection for all building and/or demolition permits issued for Covered Projects.

SEC. 5-10.06 - SUBMISSION OF WMP.

Applicants for building or demolition permits involving Covered Projects shall complete and submit a WMP in a manner approved by the City.

SEC. 5-10.07 - REVIEW OF WMP.

- a. *Timeframe for Review:* The Compliance Officer will review the WMP and advise the Applicant within five (5) days of receipt of the WMP of his/her decision regarding approval or non-approval.
- b. *Approval of WMP:* Notwithstanding any other provision of this Code, no building, demolition or similar permit shall be issued unless and until the Compliance Officer has approved the WMP for the Covered Project. Approval shall not be required, however, where a determination has been made by the City that emergency demolition is necessary to protect public health or safety. A WMP shall only be approved if the Compliance Officer determines that the following conditions have been met:
 1. The WMP confirms compliance with all provisions required by this Article; and
 2. The WMP acknowledges that all Mixed C&D Debris shall be sent to a Mixed-Recovery Facility that meets the requirements outlined in Section 5-10.12; and
 3. The WMP acknowledges that one hundred percent (100%) of the asphalt, concrete and other similar material generated by the Covered Project will be Diverted, and at least sixty-five percent (65%), by weight, or the minimum recycling rate required by CALGreen (whichever is higher) effective at the time of Covered Project submittal, of all other C&D Debris generated by the Covered Project will be Diverted; or
 4. The WMP demonstrates good cause for not meeting the requirements of Section 5-10.07(b)(3).
- c. If the Compliance Officer determines that the WMP has met conditions (1) and (2) and either conditions (3) or (4) set forth above, the WMP shall be marked "Approved". A copy of the approved WMP shall be returned to the Applicant and the Building Division shall be notified that the WMP has been approved.
- d. *Non-Approval of WMP:* If the Compliance Officer determines that the conditions in Section 5-10.07(b) have not been met, he or she shall either return the WMP to the Applicant requesting full documentation of the reasons that the requirements set forth herein cannot be met, or return the WMP to the Applicant marked "Denied". If the WMP is returned marked "Denied", it shall be accompanied by a statement of reasons for the denial. Once the Building Division is notified that a WMP has been denied, it shall not issue the permit for the Covered Project for which the WMP has been submitted until it has been notified that a WMP has been approved.

SEC. 5-10.08 - SUBMISSION OF A COMPLETED WMP SUMMARY REPORT.

At the conclusion of every Covered Project subject to this Article, and prior to issuance of a temporary or final certificate of occupancy by the City, the Applicant shall submit to Compliance Officer a WMP Summary Report that contains all of the following documentation:

- a. The actual volume or weight of C&D Debris that was Diverted and was not Diverted by type of material, and the Diversion method used by Applicant; and

- b. A copy of the previously approved WMP for the Covered Project; and
- c. The vendor(s) or facility(ies) that the Applicant utilized to collect and receive the Diverted material; and
- d. A description of any barriers that were encountered.

SEC. 5-10.09 - WEIGHING OF C&D DEBRIS.

- a. *Source-Separated C&D Debris*: All Source-Separated C&D Debris Diverted shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance.
- b. *Mixed C&D Debris*: Applicants must ensure all Mixed C&D Debris is weighed by measurement on scales and recorded by a Verified Facility or a Provisional Facility. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance.

SEC. 5-10.10 - DETERMINATION OF COMPLIANCE.

The Compliance Officer shall review the completed WMP Summary Report submitted pursuant to Section 5-10.08 to determine whether the Applicant has Diverted one hundred percent (100%) of the asphalt, concrete and similar material, and at least sixty-five percent (65%), by weight, or the minimum recycling rate required by CALGreen effective at the time of Covered Project submittal (whichever is higher), of the total of all other C&D Debris generated by the Covered Project. Such determination shall be based upon this Article and the implementing guidelines adopted by the City as follows:

- a. The Applicant shall be found to have achieved a "Diversion Attainment" if all of the following have occurred:
 - i. one hundred percent (100%) of the asphalt, concrete and similar material generated by the Covered Project has been Diverted and appropriate documentation as required by this Article has been provided to the City;
 - ii. at least sixty-five percent (65%), by weight, or the minimum recycling rate required by CALGreen (whichever is higher) effective at the time of Covered Project submittal, of the remainder of the C&D Debris generated by the Covered Project has been Diverted; and
 - iii. all Mixed C&D Debris is weighed by measurement on scales and recorded by a Verified Facility or a Provisional Facility, and appropriate documentation as required by this Article has been provided to the City.
- b. When the Applicant has not achieved Diversion Attainment for a Covered Project, the Compliance Officer shall determine if such Applicant has made a good faith effort to comply with the requirements of this Article. In making this determination, consideration may be given to information submitted by the Applicant, the availability of infrastructure and markets for the C&D Debris that was not Diverted, the size and nature of the Covered Project, the documented efforts of Applicant to Divert C&D Debris and the barriers encountered. If the Applicant is determined to have made a good faith effort to comply with the C&D Diversion and documentation

provisions herein above set forth, further compliance with this Article shall be excused. The Compliance Officer may alter Diversion requirements based upon local markets, infrastructure, and conditions.

- c. An Applicant shall be in a "Non-Attainment" status if it is determined that a good faith effort was not made and any of the following apply:
 - i. one hundred percent (100%) of the asphalt, concrete and similar material generated by the Covered Project was not Diverted;
 - ii. that sixty-five percent (65%) of the remainder of the C&D Debris, or the minimum recycling rate required by CALGreen effective at the time of Covered Project submittal (whichever is higher), was not Diverted;
 - iii. all Mixed C&D Debris was not weighed by measurement on scales and recorded by a Verified Facility or a Provisional Facility; or
 - iv. the Applicant fails to submit the documentation required by this Article.

SEC. 5-10.11 - CITY'S RIGHTS TO MONITOR AND INSPECT.

The City shall have the right to inspect all Covered Projects to determine levels of actual Diversion activities and validate the information contained in the WMP and WMP Summary Report. Upon request by the City, Applicant shall provide documentation, papers and records relating to the disposal of C&D Debris for a Covered Project.

SEC. 5-10.12 – DELIVERY TO VERIFIED OR PROVISIONAL FACILITY REQUIRED

Applicants must recycle and/or salvage nonhazardous construction and demolition materials by ensuring that 100% of the Covered Project's total Mixed C&D Debris is sent to a Verified Facility or a Provisional Facility. If no Verified Facility or Provisional Facility is operating within the nine Bay Area counties, Mixed C&D Debris may be sent to a Mixed-Recovery Facility that is not Third Party Verified.

SEC. 5-10.13 – QUALIFIED THIRD PARTY ORGANIZATIONS

Qualified Third-Party Organizations that verify Facility-Average Diversion Rates shall adhere to the following protocol:

- a. The certification organization follows guidelines for environmental claims and third-party oversight, including ISO/IEC Guide 65 or ISO 17065 and relevant portions of the ISO 14000 family of standards.
- b. The certification organization continuously monitors verified facilities to ensure that the facilities are operating legally and meeting the minimum program requirements for facility certification and recycling rates.
- c. Data submitted by the facilities to the certification organization in support of the recycling rate is audited. The audit includes, at a minimum: the evaluation of recyclables sales records, verification of facility sales into commodity markets, monitoring off-site movement of materials, and a review of the facilities' customers weight tags information.

- d. Facilities submit data to the certification organization that supports the recycling rate, such as a mass balance recycling rate (tons in/tons out) for a twelve-month period, or if not possible, quarterly (or a frequency approved by the Compliance Officer) sorts completed and verified by an independent third party entity.
- e. Breakdown of materials (by type and by weight), including analysis of supporting data relating to amounts (in tons) and types of materials received and processed at the facility.
- f. At a minimum, the third-party certifying organization conducts an on-site visit of the facility for the first year certification, with subsequent site visits occurring at least once every two (2) years, unless additional visits are deemed necessary by the certification organization. The site visit will include:
 - 1. Examination of how materials enter, are measured, deposited, processed/sorted and exit facility,
 - 2. Interviews with key personnel,
 - 3. Confirmation of equipment types and capacity,
 - 4. Observation and verification of load/materials sorting and accuracy,
 - 5. Verification of the use and accuracy of scales including calibration frequency.
- g. Recycling rates shall adhere to these requirements:
 - 1. Measurements must be based on weight (not volume), using scales.
 - 2. Recycling rates must be available on a website and viewable by the general public.
- h. Facility recycling data submitted to certification program will be analyzed for recycling rates using a mass balance formula or if not possible, quarterly (or a frequency approved by the Compliance Officer) sorts completed and verified by an in-dependent third party entity.
- i. Recycling rates shall be provided for the overall facility with and without ADC/Beneficial Reuse, and will include separate recycling rates by material type as well as combined average including wood derived fuel/bio-fuel separate from other waste to energy or incineration end-markets.

SEC. 5-10.14 - APPEALS.

An Applicant may appeal a decision of the Compliance Officer by initiating the following procedure:

- a. Within ten (10) calendar days after the date of a written decision, an appeal in writing must be filed with the Compliance Officer. The appeal shall be on a form prescribed by the Compliance Officer and shall state specifically, and in detail, the error or action which is being appealed.
- b. Within ten (10) working days of receipt of the appeal, the City Manager shall appoint a hearing officer. The Hearing Officer shall schedule a time and date, provide the

Applicant a minimum of ten (10) days written notice and conduct a hearing on the appeal.

- c. In deciding the appeal, the Hearing Officer shall consider the evidence provided by the Applicant, the Compliance Officer, and any other information he/she feels relevant to the disputed issue. In rendering a decision, the Hearing Officer shall consider and give considerable weight to purpose and intent of this Article.
- d. Within fourteen (14) working days of the completion of the hearing, the Hearing Officer shall render a written decision either affirming, modifying or reversing the decision of the Compliance Officer. The decision of the Hearing Officer shall be final.

SEC. 5-10.15 - PENALTY.

Violations of any of the provisions of this Article shall be infractions subject to the provisions of Section 1-3.00 of this Code.

Section 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the city Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

Section 4. CEQA. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14 of the California Code of Regulations) because there is no possibility that the ordinance will have a significant effect on the environment. The proposed amendments strengthen the City's existing recycling requirements for C&D debris. This ordinance would also qualify as exempt pursuant to Section 15378(b)(3) of the CEQA Guidelines as the term "project" does not include organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 25th day of April, 2017, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 2nd day of May, 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward