

ORDINANCE NO. 1325 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
AMENDING TITLE 8, HEALTH AND SAFETY, OF THE MARTINEZ MUNICIPAL
CODE BY ADDING CHAPTER 8.19 ESTABLISHING REQUIREMENTS FOR THE
RECYCLING OF CONSTRUCTION AND DEMOLITION WASTE

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

SECTION 1: Chapter 8.19, entitled "RECYCLING OF CONSTRUCTION
AND DEMOLITION WASTE" is hereby added to Title 8 of the Martinez
Municipal Code to read as follows:

8.19.010 Findings

The Martinez City Council finds the following:

- A. The State of California through its California Waste Management Act of 1989, Assembly Bill 939 ("AB 939"), requires that each local jurisdiction in the state divert 50 percent of discarded materials from landfills.
- B. In compliance with AB 939, the City Council adopted the City of Martinez Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE) in 1993.
- C. Reuse and recycling of Construction and Demolition (C&D) waste is essential to reduce waste and comply with AB 939 since construction and demolition debris make up approximately 19 percent of the City's waste stream and approximately 30 percent of the statewide waste stream.
- D. Except in unusual circumstances, it is feasible to divert at least 50 percent of all construction and demolition waste from construction, demolition, and renovation projects.
- E. The City of Martinez is joining other cities in Contra Costa County and California Integrated Waste Management Board (CIWMB) in adopting an ordinance that requires construction, demolition and renovation projects to recycle and divert construction and demolition waste from landfill disposal.

8.19.020 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 or approvals to undertake construction, demolition or renovation projects within the city.
- B. "AB 939" shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- C. "Construction" means the building or improvement of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.
- D. "Construction and Demolition Waste" ("C&D waste") 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, residential or commercial building or other structure.
- E. "Conversion factor" means the value set forth in the standardized volume-to-weight conversion 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 (WMP).
- F. "Covered project" means projects that shall be subject to the requirements of this Ordinance.
- G. "Deconstruction" means the process of carefully dismantling a building or structure in order to salvage components for reuse or recycling.
- H. "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.

- I. "Divert" means to use material for any purpose other than disposal in a landfill or transformation facility.
- J. "Diversion Requirement" means diversion from the waste stream of at least 50 percent of the total construction and demolition debris generated by a project via reuse or recycling, unless the applicant has been granted an infeasibility exemption pursuant to Section 8.19.070, in which case the diversion requirement shall be the maximum feasible diversion rate established by the WMP compliance official for the project.
- K. "Non-covered project" shall have the meaning set forth in Section 8.19.040(B) of this chapter.
- L. "Project" means any activity, which requires an application for a building, grading or demolition permit, or any similar 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 further or repeated use of construction or demolition debris.
- P. "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.
- Q. "Solid Waste" shall have the same meaning as provided in the City's Municipal Code, and shall exclude recyclables placed in an approved recycling container.
- R. "Total costs" means the total construction value of the project using standard commercial and residential valuation formulas.

- S. "Waste Management Plan" ("WMP") 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 shall identify anticipated C&D waste materials that will be generated for disposal and recycling. The WMP will record actual material weight or volume and disposal and recycling receipts.
- T. "WMP compliance official" ("official") means the designated city employee(s) authorized and responsible for implementing this chapter.

8.19.030 Diversion Requirement

The applicant for a covered project, as defined below, shall divert at least **50%** of construction and demolition waste unless the applicant is granted an infeasibility exemption.

8.19.040 Threshold for Covered Projects.

- A. **Covered Projects.** Every construction, demolition or renovation project within the City of Martinez, for which the total costs thereof are, equal or greater than \$75,000, or which involve the construction, demolition, or renovation of **5,000** square feet or more shall be considered a covered project and shall comply with the diversion requirement and with the other requirements of this chapter. For the purposes of determining whether a project meets the foregoing thresholds for a covered project, all phases of the project and all related projects taking place on a single or adjoining parcel shall be deemed a single project.
- B. **Non-covered Projects.** Construction, demolition and renovation projects within the city that do not meet the threshold for covered projects shall be considered non-covered projects. Applicants for non-covered projects shall be encouraged to meet the 50 percent diversion requirement. Immediate or emergency demolition required to protect the public health, safety or welfare, as determined by a public safety official or code compliance officer shall also be considered a non-covered project.

- C. **Public Projects of the City:** All construction, demolition and renovation projects undertaken by the City of Martinez whose total costs are equal to or greater than \$75,000, or which involve the construction, demolition or renovation of 5,000 square feet or more shall be considered covered projects for the purposes of this chapter. The project sponsor shall submit a WMP to the official prior to beginning any construction or demolition activities.
- D. **Building and Demolition Permits:** Compliance with the provisions of this chapter shall be identified as a condition of approval on any building or demolition permit issued for a covered project.

8.19.050 Submission of the Waste Management Plan (WMP).

- A. **WMP Form.** All applicants for covered projects shall complete and submit a WMP on a form provided by the City as part of the application requirements for a building, grading or demolition permit. The completed WMP shall include all of the following:
 - 1. Identification of C&D waste material to be generated by the project;
 - 2. For each type of C&D waste material, declare whether the disposal method will be "Recycle", "Salvage" or "Landfill";
 - 3. For each type of C&D waste material which will be diverted, identification of the vendor or facility that will collect or receive the material.
- B. **Deconstruction and Material Salvage.** 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 being transported for disposal to a recycling center, transformation facility, or landfill.

8.19.060 Diversion Security Deposit Required

Each applicant of a covered project shall submit as part of the WMP a diversion security deposit, in cash or by irrevocable letter of credit, in the amount of one percent (1%) of the total costs for the project. The deposit shall be returned, without

interest, in total or in proportion, upon the WMP compliance official's determination, in accordance with Section 8.19.090 that the applicant has satisfied, or failed to satisfy, the diversion requirement approved as part of the WMP.

8.19.070 Infeasibility Exemption.

- A. **Application.** If an applicant for a covered project believes that circumstances exist which 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 as required by Section 8.19.050 of this chapter. The applicant shall state on the WMP form the maximum rate of diversion the applicant believes is feasible for each type of C&D waste material and the specific circumstances why the applicant believes it is infeasible to comply with the diversion requirement.
- B. **WMP Compliance Official Review.** 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. Based on the information supplied by the applicant, the official shall determine whether it is possible for the applicant to meet the diversion requirement.
- C. **Granting the Exemption.** If the WMP compliance official determines that it is infeasible for the applicant to meet the diversion requirement, the official shall put the reasons for this determination in writing based on the criteria contained in paragraph E below. The WMP compliance official shall determine the maximum feasible diversion rate for each C&D waste material and shall indicate this rate on the WMP application submitted by the applicant. The official shall then determine the diversion rate which will be applicable for the project. The official shall return a copy of the WMP application to the applicant marked "Approved for Infeasibility Exemption" and shall notify the building department that the WMP has been approved provided that the applicant has posted the required diversion security deposit.

- D. **Denial of Exemption.** If the WMP compliance official determines that it is possible for the applicant to meet the 50 percent diversion requirement specified in Section 8.19.030, the official shall state the reasons therefore in writing based on the criteria contained in paragraph E below. The applicant shall have 30 days to resubmit a WMP application that complies with Section 8.19.050. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not satisfy the requirements of Section 8.19.080(B), the official shall deny the WMP in accordance with Section 8.19.080(D).
- E. **Criteria.** In determining whether to approve or deny an application for an exemption from the diversion requirement, the WMP compliance official shall base his or her written determination on the following criteria.
1. The presence or absence of exceptional or extraordinary circumstances or conditions applicable to the project that do not apply to similar projects.
 2. A determination of whether the granting the exemption constitutes a grant of special privilege inconsistent with the limitations imposed on like projects.
 3. In determining whether to approve or deny an application for an exemption, the cost to the applicant of satisfying the diversion requirement shall not be the primary reason for granting an exemption although cost may be a factor in the official's determination of whether there are exceptional or extraordinary circumstances or conditions applicable to the project.

8.19.080 Review of the Waste Management Plan (WMP).

- A. **WMP Approval Required For Issuance of Construction Permits.** No building or demolition permit shall be issued or approved for any covered project unless and until the WMP has been approved.
- B. **WMP Approval.** A WMP shall be approved only if the official determines that the following conditions have been satisfied:
1. The WMP form submitted by the applicant satisfies all of the requirements specified in Section 8.19.050 and the official has determined that the form is complete.

2. The applicant demonstrates to the WMP Compliance Official's satisfaction, that at least 50 percent of the C&D waste for the covered project, or an alternative percentage approved by the official as part of the infeasibility exemption, will be diverted.
 3. The applicant has posted the required diversion security deposit.
- C. **Notification to Applicant and Building Official:** If the official determines that these conditions have been met, the official shall approve the WMP application, issue a copy of the approved application to the applicant and notify the City building official that the WMP application has been approved.
- D. **Disapproval.** If the WMP compliance official determines that the WMP application is incomplete, fails to include the required diversion security deposit, or fails to demonstrate compliance with the diversion requirement, the official shall either:
1. Return the WMP application form to the applicant marked "Denied", and include a written statement of the reasons for the disapproval; or
 2. Return the WMP application form to the applicant with the WMP marked "Further Explanation Required" and include written instructions for providing the necessary explanation.
- E. **Notification to Building Official If WMP Disapproved.** If the WMP application is disapproved by the WMP compliance official in either manner specified in Section 8.19.080(D), the official shall so notify the City building official who shall immediately stop processing the building or demolition permit for the project.

8.19.090 Determination of Compliance and Release of Diversion Security Deposit

- A. **WMP Final Submission.** Within 30 days after the completion of construction for any covered project, the applicant shall submit to the WMP compliance official documentation that the applicant has met the diversion requirement for the project. This documentation shall include the following:

1. A copy of the previously approved WMP for the project with actual material volume or weight generated by the project; and
 2. Receipts and/or disposal weight records from both disposal and recycling facilities and/or vendors that received each material showing whether the material was landfilled or recycled; and
 3. Any additional information that the applicant believes is relevant to determining its efforts to comply in good faith with this chapter.
- B. **Weighing of C&D Waste Materials.** Applicants shall make reasonable efforts to ensure that all C&D waste diverted or landfilled is measured and recorded using the most accurate method of measurement available. To the extent practical, all C&D waste shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D waste for which weighing is not practical due to small size or to other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates provided by the City for this purpose.
- C. **Determination of Compliance.** The WMP compliance official shall review the information submitted by the applicant and determine whether the applicant has complied with the diversion requirement.
- D. **Full Compliance.** If the official determines that the applicant has fully complied with the diversion requirement applicable to the project as contained in the approved WMP, the official shall release the full diversion security deposit to the applicant.
- E. **Less Than Full Compliance:** If the WMP compliance official finds that the applicant has not satisfied the diversion requirement for the project, the official shall calculate the applicant's percentage rate of compliance. The official shall then determine whether the applicant has made a good faith effort to comply with the diversion requirement. In making this determination, the official shall consider the availability of markets for the C&D waste landfilled, the size of the project and the documented efforts of the applicant to divert the C&D

waste. The official shall then authorize the release of some or all of the deposit to the applicant. At a minimum, the applicant shall be entitled to a release of that portion of the diversion security deposit which equals the applicant's percentage rate of compliance. Therefore, if the applicant has achieved sixty percent (60%) of the diversion requirement for the project, the official shall release at least 60 percent (60%) of the diversion security deposit. The official shall furnish the applicant in writing with the method by which the official calculated the applicant's percentage of compliance and the reasons for the official's determination of the amount of the deposit to be released to the applicant.

- F. **Failure to Submit Documentation.** If the applicant fails to submit the documentation required by Section 8.19.090(A) within the required time period, the entire diversion security deposit shall be deemed forfeited. The official shall inform the applicant in writing of the forfeiture of the deposit for failure to timely submit the required documentation. If the documentation is submitted after the required time period, the official shall evaluate whether the applicant has complied with the diversion requirement for the project. However, ten percent (10%) of the deposit shall be deemed forfeited to the City because of the applicant's failure to submit the required documentation within the required time period.

- G. **Withdrawal of Building or Demolition Permit Application.** The WMP compliance official shall authorize the refund of the entire diversion security deposit if the building or demolition permit is withdrawn or cancelled before any work begins.

- H. **Use of Retained Diversion Security Deposits.** All diversion security deposit monies retained by the City shall be used only for the purpose of administering the program established through this chapter or for the purpose of promoting recycling within the City.

8.19.100 Appeals

- A. **Appeal to the City Manager or the City Manager's Designee.** An applicant shall have the right to appeal any decision or determination of the WMP compliance official to the City Manager or the City Manager's designee. The applicant must

file a notice of appeal within 10 calendar days from the date of the official's decision or determination. The notice of appeal shall state the reasons for the appeal as well as all of the evidence and legal arguments upon which the applicant bases the appeal. The appeal must also be accompanied by the appeal fee established by resolution of the City Council. The City Manager or the City Manager's designee shall schedule the appeal for a hearing and provide the applicant at least five (5) days written notice of the time and place of the hearing. Within thirty (30) days of the conclusion of the hearing, the City Manager or the City Manager's designee shall inform the applicant in writing whether the decision or determination of the WMP compliance official shall be affirmed, denied or modified. The written determination by the City Manager or the City Manager's designee shall include the reasons for the determination.

- B. **Appeal to the City Council.** The applicant may appeal the determination of the City Manager or the City Manager's designee to the City Council by filing a written notice of appeal with the City Clerk within 10 days from the date of the City Manager's or the City Manager's designee's written determination. The notice of appeal shall be accompanied by the appeal fee established by City Council resolution. The notice of appeal shall also include all evidence and legal arguments which the applicant wishes the City Council and any reviewing court to consider. The City Clerk shall cause the appeal to be set for hearing before the City Council. The City Clerk shall provide the applicant with no less than 10 days written notice of the time and place of the hearing. The written determination of the City Council at the conclusion of the hearing shall be final.

8.19.110 Administrative Fee.

As a condition precedent to the issuance of any building or demolition permit for a covered project, the applicant shall pay the City a fee, established by resolution of the City Council and equivalent to one "Miscellaneous" staff hour per the city's staff cost rate table, to compensate the City for staffing expenses incurred in administering this Article.

8.19.120 Enforcement

- A. **Public Nuisance.** Violation of any provision of this chapter shall constitute a public nuisance and be subject to abatement pursuant to the provisions of Chapter 1.13 of this Code.
- B. **Civil Action.** Violation of any provision of this chapter may also be enforced by any means available to the City, including, but not limited to, an action for injunctive relief. In any civil action, administrative or judicial, the City shall be entitled to recover its attorney fees and costs from the defendant if it is determined that defendant violated this chapter.
- C. **Misdemeanor:** Violation of any provision of this chapter shall constitute a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment.

SECTION II. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

SECTION III. EFFECTIVE DATE

This ordinance shall become effective 30 days after the date of adoption.

SECTION IV. POSTING

The City Clerk shall cause this ordinance to be published at least once, with the names of those City Councilmembers voting for or against the ordinance, in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Deputy City Clerk

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I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 15th day of February, 2006, and adopted at a Regular Meeting of said City Council held on the day of 1st day of March, 2006, by the following vote:

AYES: Councilmembers Ross, Wainwright, Vice Mayor DeLaney, and Mayor Schroder

NOES: None

ABSENT: Councilmember Kennedy

ABSTAIN: None

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ