

**City of Pleasant Hill**

**Construction and Demolition Debris Ordinance**

Adopted by City Council Ordinance No. 774 on July 21, 2003

## Pleasant Hill Municipal Code

### Section 10-7, Construction and Demolition Debris

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#### **10-7.1. Findings.**

The City Council of the City of Pleasant Hill finds that:

- a. The State of California requires that each local jurisdiction in the state divert 50% of discarded materials from landfills from the base year (1990) to December 31, 2000, and thereafter to maintain or exceed that diversion rate. (California Integrated Waste Management Act of 1989, Public Resources Code §40000 and following; also known as AB 939.)
- b. Every city and county in California, including Pleasant Hill, could face fines of up to \$10,000 a day for not meeting the above mandated goal.
- c. Construction and demolition debris (C&D) make up approximately 30% of California's waste stream. Reusing and recycling C&D debris are essential to further the City's efforts to reduce waste and comply with AB 939 goals.
- d. C&D debris waste reduction and recycling have been proven to reduce the amount of such material which is placed in landfills, increase site and worker safety, and be cost effective.
- e. Except in unusual circumstances, it is feasible to divert an average of at least 50% of all C&D debris from construction, demolition, and renovation projects.
- f. The City of Pleasant Hill, along with other cities in Contra Costa County and California, is adopting an ordinance that requires construction, demolition and renovation projects to recycle at least a portion of the resultant debris.
- g. To ensure compliance with this section and to ensure that those contractors that comply with this section are not placed at a competitive disadvantage, it is necessary to impose a performance security requirement.

## 10-7.2 Definitions

In this section, the following definitions apply:

"**AB939**" means Assembly Bill 939, the California Integrated Waste Management Act of 1989, and amendments to it, found at California Public Resources Code section 40000 and following.

"**Applicant**" means any individual, or public or private entity that applies to the city for a building permit or encroachment permit (for construction, demolition or renovation).

"**Building official**" means the city's chief building official or his or her designee. (For a public works project or work involving an encroachment permit, the public works director or his or her designee performs the function.)

"**City manager**" means the city manager of Pleasant Hill or his or her designee.

"**Construction**" means the building of any facility or structure or any portion thereof including any improvements to an existing facility or structure.

"**Construction and demolition debris**" or "**C & D**" means used or discarded materials resulting from construction, renovation, remodeling, repair, demolition, excavation or construction clean-up operations on any pavement or structure. (See PHMC section 10-7 for regulations.)

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

"**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.

"**Divert**" means to use material for any purpose other than disposal in a landfill or transformation facility. "Divert" includes reuse and recycle.

"**Diversion requirement**" means the diversion of at least 50% of the total construction and demolition debris generated by a project by reuse or recycling, or the requirement established by the building official for the project under an exemption. (See section 10-7.8.)

"**Encroachment permit**" means the permit issued for work in the public right of way, under PHMC chapter XV. For purposes of this section 10-7, "encroachment permit" refers only to a permit issued for city-sponsored work.

"**Performance security**" means a performance bond, surety bond, money order, letter of credit, or certificate of deposit submitted to the city under section 10-7.5B.

**"Project"** means any activity involving construction, demolition or renovation, and which requires issuance of a building permit or an encroachment permit. Project also includes city-sponsored construction, demolition or renovation.

**"Regulated project"** means a project of \$50,000 or more, or a project which involves 5,000 square feet or more. (See also section 10-7.3.)

**"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. Recycling does not include transformation as defined in Public Resources Code section 40201.

**"Renovation"** means any change, addition, or modification to an existing structure.

**"Salvage"** means the controlled removal of construction or demolition debris from a building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse

**"Solid waste"** means all solid, semi-solid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, green waste, vehicle parts, discarded home and industrial appliances, sewage sludge (dewatered, treated or chemically fixed), manure, vegetable or animal wastes, and other discarded wastes under Public Resources Code section 40191. It includes recyclable materials that are discarded by the generator and mixed waste.

**Garbage** means kitchen and table food waste, and animal or vegetable waste that results from the storage, preparation, cooking or handling of food.

**Refuse** means garbage and rubbish. It does not include green waste or recyclable material.

**Rubbish** means non-putrescible solid wastes such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber byproducts or litter.

**"Total costs"** means the total construction value of the project as calculated by the building division using the city's standard commercial and residential valuation formulas.

**"Waste management plan"** or **"WMP"** means a plan approved by the city under this section, for a regulated project.

**"Waste management plan fee"** or **"WMP fee"** means the fee charged by the city to administer and implement the C&D ordinance.

### 10-7.3 Regulated projects.

A construction, demolition or renovation project within the city, the total costs of which are, or are projected to be, equal to or greater than \$50,000, or which involve the construction, demolition or renovation of 5,000 or more square feet are considered regulated projects under this section 10-7.

It is unlawful to split or separate a regulated project into small work projects for the purpose of evading the requirements of this section 10-7.

The applicant for a regulated project (a project of \$50,000 or more, or a project involving 5,000 square feet or more) shall comply with this section 10-7. Compliance with this section shall be listed as a condition of approval on any building or demolition permit, or encroachment permit, issued for a regulated project. The failure to include such a condition does not relieve the applicant from complying with this section.

Builders of projects which are not regulated are encouraged to divert as much C&D debris as possible.

No building, grading, demolition or encroachment permit shall be issued for a regulated project unless and until the building official has approved a WMP for the project.

#### **10-7.4 Authority to implement.**

The chief building official is authorized to implement and is responsible for implementing this section 10-7. The public works director is authorized to implement this section 10-7 when the work is a public works project or involves an encroachment permit.

#### **10-7.5 Waste management plan; Performance security.**

A. WMP Application. Each applicant for a building, demolition or encroachment permit (for a regulated project) shall submit a completed waste management plan (WMP) with the first plan check. The completed WMP shall include all of the following:

1. The total square footage of the area to be constructed or demolished.
2. A list of the C&D debris material types to be generated; and
3. The identity of the vendor(s) or facility(ies) that the applicant proposes to use to collect or receive that material.
4. An acknowledgement of responsibility that the applicant understands the consequences of not meeting the 50 percent diversion requirement and that the applicant is responsible for the actions of their contractors or other agents with regard to the diversion requirement.

In preparing the WMP, an applicant for a plan check 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 before placing in a landfill.

#### **B. Performance security.**

1. Requirement. The applicant for any regulated project shall submit a performance security. The amount of the performance security shall be calculated as a percentage of the project's total cost, as follows:

Project Total Costs - \$	Performance Security -- %	Performance Security -- \$
50,000 – 500,000	2.00	1,000 – 10,000
500,001 – 1,000,000	1.75	10,000 – 18,750
1,000,001 – 2,000,000	1.50	18,750 – 33,750
2,000,001 – 5,000,000	1.25	33,750 – 91,250
Above 5,000,000	1.00	91,250 and up

2. Form of security. The performance security may be a performance bond, surety bond, money order, letter of credit, certificate of deposit, cash, escrow account, or alternate security approved by the city attorney.

### 10-7.6 Evaluation of WMP.

A. Approval. The building official shall approve a WMP only 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 10-7.5; and
2. the WMP shows that at least 50% of all C&D debris generated by the project will be diverted.

If the building official determines that all of the above conditions have been met, he or she shall mark the WMP "Approved", return a copy of the WMP to the applicant, and place a copy of the approved WMP in the building permit file for the project.

B. Denial. If the building official determines that the WMP is incomplete or fails to show that at least 50% of all C&D debris generated by the project will be diverted, he or she shall either:

1. return the WMP application to the applicant marked "Denied", including a statement of reasons, and retain a copy of the denial in the building department. The building division shall then immediately stop processing the plan check; or
2. return the WMP to the applicant marked "Further Explanation Required", and retain a copy in the building department.

C. Approval required before building permit. Notwithstanding any other provision of this code, no building permit or encroachment permit shall be issued for any regulated project until:

1. the building official has approved the WMP. However, approval is not required if the building official determines that an emergency demolition is required to protect public health or safety;
2. the applicant posts the required performance security, under section 10-7.5B; and
3. the applicant pays the WMP fee in the amount established by city council resolution.

**10-7.7 Compliance with WMP.**

A. Applicant's documentation. Before the issuance of a certificate of occupancy of any regulated project, the applicant shall submit to the building official documentation that it has met the diversion requirement 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. (The documentation may be for commingled loads when appropriate.);
2. A copy of the approved WMP, with the addition of the actual volume or weight of each material diverted or placed in a landfill;
3. Any additional information the applicant believes is relevant in determining efforts to comply in good faith with this section.

B. Weighing of wastes. An applicant shall make reasonable efforts to ensure that all C&D debris diverted or placed in a landfill is 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 table approved by the city for this purpose.

C. Determination of compliance and release of performance security. The building official shall review the information submitted under section 10-7.5 and determine whether the applicant has complied with the diversion requirement, as follows:

1. Full compliance: If the building official determines that the applicant has fully complied with the diversion requirement, he or she shall cause the full performance security to be released to the applicant within 30 days of the applicant's submission of the documentation required under subsection A above.
2. Good faith effort to comply. If the building 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 section. In making this determination, the building official shall consider the availability of markets for the C&D debris placed in a landfill, the size of the project, and the documented efforts of the applicant to divert C&D debris. If the building official determines that the applicant has made a good faith effort to comply with this section, he or she shall release the performance security, or a portion of it in proportion to the degree of compliance, to the applicant within 30 days of the applicant's submission of the documentation required under subsection A above.

3. Noncompliance. If the building official determines that the applicant has not made a good faith effort to comply with this section, or if the applicant fails to submit the documentation, then, at the building official's discretion, (1) the certificate of occupancy will not be issued, or (2) the performance security shall be forfeited to the city, or (3) both.

4. Use of forfeited security. Forfeited performance securities shall be deposited into a special account and used for the purposes of (1) payment of any fines which may be assessed against the city, and (2) promoting diversion and recycling within the city.

#### 10-7.8 Exemption.

A. Application. If an applicant for a regulated 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 10-7.5. 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 building official. The building 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 building official shall determine whether it is possible for the applicant to meet the diversion requirement.

C. Granting of exemption. If the building 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 building official shall return a copy of the WMP to the applicant marked "Approved with exemption" and shall place a copy of the approved-with-exemption WMP in the building department project file.

D. Denial of exemption. If the building 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. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with this section, the building official shall deny the WMP in accordance with section 10-7.6B.

#### 10-7.9 Appeal.

An applicant may appeal a determination made under this section to the city manager. To appeal, the applicant shall file a written appeal with the city clerk within 10 days after the determination of the building official, stating the reasons for the appeal. An appeal is limited to the following issues: (1) the granting or denial of an exemption; (2) whether the applicant has made a good faith effort to comply with the WMP; and (3) the amount of security to be released. The city manager shall hear the appeal within 30 calendar days, and shall give 10 days prior written notice to the applicant.



**10-7.10 Enforcement.**

A. Civil action. Violation of this section 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 section.

B. Misdemeanor. A violation of this section constitutes a misdemeanor as defined in Government Code section 36900. However, the city attorney or other city enforcement officer is authorized to prosecute the violation as an infraction, at his or her discretion, punishable as set forth in section 1.5 of this code. Where the violation is the failure to achieve the diversion requirement and the C & D materials from the project have already been placed in a landfill, the violation shall be deemed to have ceased after a period of ten days.

C. Public nuisance. A violation of this section is a public nuisance.

D. Authority to enforce. The community development director and the city attorney are authorized to enforce this section."

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