

**ORDINANCE NO. 09-1252**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY AMENDING ARTICLE V "SANITATION" OF THE DOWNEY MUNICIPAL CODE BY AMENDING CHAPTER 8 – "CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT".**

**WHEREAS**, the City of Downey (City) finds that 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% of discarded materials from landfills by December 31, 2000; and

**WHEREAS**, certain provisions of AB 939, codified at Public Resources Code §41821, require the City to provide the California Integrated Waste Management Board (CIWMB) with an annual report concerning the City's progress in meeting the diversion requirements with respect to construction and demolition materials; and

**WHEREAS**, certain provisions of AB 939, codified at Public Resources Code §41850, require CIWMB to take into consideration whether the City has adopted an ordinance requiring diversion of construction and demolition materials, or made other good faith efforts to meet the diversion requirements with respect to construction and demolition materials, in determining whether to impose penalties on the City for failure to meet the diversion requirements; and

**WHEREAS**, the City finds that reusing and recycling Construction and Demolition (C&D) Debris is essential to further the City's efforts to reduce waste and comply with AB 939 goals; and

**WHEREAS**, the City finds that C&D debris waste reduction and recycling have been proven to reduce the amount of such material deposited in landfills, increase site and worker safety, and to be cost effective; and

**WHEREAS**, the City finds that, except in unusual circumstances, it is feasible to divert one hundred percent (100%) of inert, and fifty percent (50%) or more of other C&D debris from construction, demolition, and renovation projects;

**WHEREAS**, the City is concerned that some operators and providers of construction, demolition, renovation, and removal services have and will attempt to circumvent the City's current C&D requirements by breaking larger projects into smaller projects over time; and

**WHEREAS**, the City wishes to remain responsive to fluctuations in the economy and not to disproportionately affect businesses who seek to comply with the City's C&D requirements by granting City Staff authority to use discretion in contemplating what constitutes covered projects and for allowing certain security deposit amounts;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DOWNEY DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 8 of Article V of the Downey Municipal Code is amended to read as follows:

**“CHAPTER 8**  
**CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT**

**SECTION 5800. TITLE.**

Chapter 8 shall be known as “Construction and Demolition Waste Management” and may be referred to as such. (Added by Ord. 1217, adopted 8-17-07)

**SECTION 5810. 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, removal, or renovation project within the City.

B. “City Franchise Waste Hauler” means the company or individual that the City has contracted, exclusively to provide waste collection and disposal services to the City.

C. “City-Sponsored Project” means any construction, deconstruction, demolition, remodeling, repair, cleanup, or removal project performed on behalf of the City via contract with the City.

D. “Construction” means the building of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.

E. “Construction and Demolition (C&D) Debris” means building materials and solid waste from construction, deconstruction, remodeling, repair, cleanup, removal, or demolition operations that are not “hazardous” (as defined in Public Resources Code section 40141). This term includes, but is not limited to: asphalt, concrete, Portland cement, brick, lumber, wallboard, drywall, roofing material, ceramic tile, windows, doors, fixtures, plastic pipe, carpet and carpet padding, dirt, glass, yard waste, stucco, rock, gravel, metals, and any associated packaging.

F. “Conversion Rate” means the rate set forth in the standardized Conversion Rate Table approved by the Director of Public Works or his/her designee pursuant to Section 5830 for use in estimating the volume or weight of materials identified in a Waste Management Plan.

G. “Covered Project” means any construction, renovation or grading project within the City, the total costs of which are projected to be greater than or equal to seventy-five thousand dollars (\$75,000.00); or, any demolition or removal project within the City, the total costs of which are projected to be greater than or equal to seventy-five thousand dollars (\$75,000.00), or is five hundred (500) square feet or greater; except for those projects exempted by Section 5870 of this Chapter. A Covered Project may be any combination of construction, renovation, grading, demolition and/or removal projects, including any and all sub-projects regardless of the time when contracted for or carried out, in the discretion of City Staff.

H. “Deconstruction” means the careful and systematic dismantling of a structure in order to salvage materials for diversion.

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I. "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, and any removal of the same.

J. "Dispose" means the final deposition of solid waste onto land, into the atmosphere, or into the waters of the State.

K. "Divert" means to use material for any purpose other than disposal in a landfill or transformation facility.

L. "Diversion Requirement" means the diversion of one hundred percent (100%) of inert debris 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 exemption pursuant to Section 5870 in which case the diversion requirement shall be the maximum feasible diversion rate established by the Waste Management Plan (WMP) Compliance Official for the project.

M. "Grading" means any excavating, filling or combination thereof.

N. "Hazardous waste" means hazardous waste as defined by Section 40141 of the Public Resources Code.

O. "Hearing Officer" means the City Manager or his or her designee.

P. "Inert Debris" means asphalt, brick, concrete, rock, gravel, stone, sand, soil, aggregate base, reinforcing bar (rebar), metals, and tile.

Q. "Medical waste" means waste regulated pursuant to the Medical Waste Management Act, Section 117600 et seq. of the Health and Safety Code, and not deemed to be solid waste pursuant to Section 40191(b)(3) of the Public Resources Code.

R. "Non-Covered Project" means any Project that is not a Covered Project.

S. "Performance Security" means performance bond, surety bond, cash deposit, money order, letter of credit or certificate of deposit submitted to the City pursuant to Section 5840.

T. "Project" means any activity that requires an application for a building, encroachment, or demolition permit or any similar permit from the City, and may include subprojects of a larger Project.

U. "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.

V. "Removal" means the transporting of Construction and Demolition Debris from any premises or project during construction, deconstruction, remodeling, repair, reconstruction, renovation, and/or demolition operations on any pavement, concrete, asphalt, house, residence, commercial building, or other structure or surface.

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W. "Renovation" means any change, addition, and/or modification in an existing structure, land, or surface.

X. "Reuse" means further or repeated use of C&D Debris.

Y. "Salvage" means the controlled removal of C&D Debris from a permitted building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

Z. "Transformation facility" means a facility whose principal function is to convert, combust, or otherwise process solid waste by incineration, pyrolysis, destructive distillation, gasification, or to chemically or biologically process solid waste for the purpose of volume reduction, synthetic fuel production, or energy recovery. Transformation facilities do not include biomass conversion or composting facilities. (Title 14, California Code of Regulations, section 18720)

AA. "Waste Management Plan (WMP)" means a written plan for disposal, recycling and reuse of project C&D Debris prepared and submitted pursuant to Section 5830 in a form prescribed by the WMP Compliance Official.

AB. "WMP Compliance Official" means the Director of Public Works or his or her designee. (Added by Ord. 1217, adopted 8-17-07)

AC. "WMP Compliance Report" means the written documentation of the actual C&D materials that were generated from the project, indicating their weight, final destination, and listing whether they were disposed of, recycled or reused, and submitting along with all required receipts, pursuant to Section 5860 in a form prescribed by the WMP Compliance Official. This WMP Compliance Report will indicate whether the applicant complied with the C&D requirements.

**SECTION 5820. THRESHOLD FOR PROJECTS.**

A. Covered Projects. All Covered Projects shall comply with this chapter. Failure to comply with any of the requirements of this chapter shall subject the Project applicant to the full range of enforcement mechanisms set forth in Section 5890, below.

B. Non-Covered Projects. Projects meeting any of the following criteria shall be exempt from the requirements of this Chapter, provided that the applicant has provided the City with satisfactory evidence supporting the claimed exemption on the City's WMP form, and provided that the City has issued a written determination of exemption, which may take the form of a stamp or other notation of exemption on said form.

1. Projects not meeting any of the criteria described in Section 5810(G);
2. Immediate or emergency construction, repair, or demolition work required to protect the public health or safety in an emergency, as defined in Section 21060.3 of the Public Resources Code, as it may be amended from time to time;
3. Work for which a building or demolition permit is not required by this Code;
4. Roofing projects that do not include tear-off of existing roof;

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5. Work for which only a plumbing, only an electrical, or only a mechanical permit is required;

6. Projects where no structural building modifications are required, excepting projects where parking lot improvements and/or residential driveway improvements are included;

7. A project for which a valid building permit has been issued prior to the effective date of this ordinance and remains in effect at the time of construction; or

8. A City project for which the notice inviting bids has been published prior to the effective date of the ordinance codified in this chapter, as revised, but prior to awarding of the bid.

9. Applicants for Covered Projects within the City that are exempt from the requirements of this chapter shall be encouraged to divert at least fifty percent (50%) of all project-related C&D Debris.

C. City-Sponsored Projects. All City-sponsored Projects shall be considered "Covered Projects" 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 other applicable provisions of this Chapter.

D. Compliance as a Condition of Approval. Compliance with the provisions of Sections 5830, 5840, 5850, and 5860 shall be listed as a condition of approval on any building or demolition permit issued for a Covered Project. (Added by Ord. 1217, adopted 8-17-07)

**SECTION 5830. WASTE MANAGEMENT PLAN.**

A. Waste Management Plan: Prior to starting a project, applicants for building, encroachment, or demolition permits involving any Covered Project shall complete and submit a Waste Management Plan (WMP) to the WMP Compliance Official, on a WPM form approved by the City for this purpose as part of the application packet for the building, encroachment, or demolition permit. The completed WMP shall indicate all of the following:

1. The estimated volume or weight of project C&D Debris, by materials type, to be generated;

2. The maximum volume or weight of such materials that can feasibly be diverted via reuse or recycling;

3. The estimated volume or weight of C&D Debris that will be landfilled; and

4. The vendor or facility that the applicant proposes to use to collect or receive the C&D Debris.

B. Contracting with the City's Franchise Waste Hauler. Applicants who submit a WMP certifying that all C&D Debris from their project will be processed and recycled by the City Franchise Hauler and who, in fact, have all C&D Debris processed and recycled by the City Franchise Hauler, and is verified in the City's Franchise Hauler's monthly reports, shall have met the requirements of this chapter.

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C. Calculating Volume and Weight of Debris. In estimating the volume or weight of materials identified in the WMP, the applicant shall use the standardized conversion rates approved by the City for this purpose.

D. Deconstruction. In preparing the WMP, applicants for building demolition or 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 recycling and/or landfilling. (Added by Ord. 1217, adopted 8-17-07)

**SECTION 5840. PERFORMANCE SECURITY.**

A. Performance Security Required; Acceptable Form. All applicants for a Covered Project shall submit a performance security with all WMP documents. The amount of the performance security shall be three percent (3%) of the total estimated project cost or a minimum of twenty-five hundred dollars (\$2,500.00), but shall not exceed fifty thousand dollars (\$50,000.00). Acceptable forms of performance security include the following: performance bonds, surety bonds, cash deposits, money orders, letters of credit, and certificates of deposit.

B. Return of Performance Security; Requirements; Amount Returned. The entire Performance Security shall be returned, without interest, within a reasonable period of time following submission of satisfactory proof to the WMP Compliance Official that no less than the required percentage of construction and demolition waste tonnage generated by the Covered Project has been diverted from disposal and has been recycled or reused or stored for later reuse or recycling. If a lesser percentage of construction and demolition waste tonnage than required is diverted, a proportionate share of the deposit shall be returned. The deposit shall be forfeited entirely or to the pro-rated extent that there is a failure to comply with the requirements of this chapter, in the discretion of City Staff. The deposit, or portion thereof, shall be returned only after the project has been completed, upon submittal of the required WMP reports, and the WMP Compliance Official's approval. (See Appendix A)

**SECTION 5850. REVIEW OF WASTE MANAGEMENT PLAN.**

A. Approval: Notwithstanding any other provision of this Code, no building, encroachment, or demolition permit shall be issued for any Covered Project unless and until the WMP Compliance Official has approved the WMP. The WMP Compliance Official shall approve any WMP that indicates use of the City Franchise Waste Hauler for any Covered Project. 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 Section 5830;
2. The WMP indicates that one hundred percent (100%) of inert debris and at least fifty percent (50%) of the remaining C&D Debris generated by the project will be diverted;
3. The applicant has submitted appropriate performance security in compliance with Section 5840.

If the WMP Compliance Official determines that these three (3) conditions have been met, he or she shall mark the WMP "Approved," return a copy of the WMP to the applicant, and notify the Building and Safety Department that the WMP has been approved.

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B. Nonapproval: If the WMP Compliance Official determines that the WMP is incomplete or fails to indicate that one hundred percent (100%) of inert debris and at least fifty percent (50%) of the remaining C&D 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 reason(s) for the denial and provide notification to the Building and Safety 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," including a statement of reasons for the requested explanation and provide notification to the Building and Safety Department.

**SECTION 5860. WASTE MANAGEMENT PLAN - COMPLIANCE REPORTING.**

A. Final Report/Documentation: After the completion of any Covered Project, the applicant shall, as a condition precedent to final approval of the project and to issuance of any Certificate of Occupancy, submit documentation on WMP forms, to the WMP Compliance Official, proving compliance with the requirements of Sections 5830 and 5860. A Certificate of Occupancy shall not be issued to the applicant until approval of the WMP Compliance Report by the WMP Compliance Official. This documentation shall consist of a final completed WMP including 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 the Diversion Requirement.

B. Weighing of Wastes. Applicants shall make reasonable efforts to ensure that all C&D Debris diverted or landfilled 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 rates.

C. Determination of Compliance. The WMP Compliance Official shall review the information submitted under subsections A and B of this section and determine the extent the applicant has complied with the diversion requirement. The WMP Compliance Official shall determine as follows:

1. Full Compliance. The WMP Compliance Official shall find the applicant to be in full compliance if one hundred percent (100%) of inert debris and at least fifty percent (50%) of the remaining C&D Debris generated by the project has been diverted via reuse or recycling, and he or she shall cause the full performance security to be released by the City's Engineering Division to the applicant.

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2. Partial Compliance. 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 the Diversion Requirement. In making this determination, the WMP Compliance Official shall consider the availability of markets for the C&D Debris landfilled, the size of the project, and the documented efforts of the applicant to divert C&D Debris. If the WMP Compliance Official determines that the applicant has made a good faith effort to comply with this section, he or she shall consider the project in compliance and notify the City's Engineering Division to release the performance security, or portion thereof, to the applicant. (For examples of compliance formula, see City of Downey's Construction and Demolition Ordinance, Appendix A.)

3. Noncompliance. If the WMP Compliance Official determines that the applicant has not met the Diversion Requirements of this chapter, and has not made a good faith effort to comply with the Diversion Requirement, or if the applicant fails to submit the documentation required by this section, the applicant shall be deemed noncompliant and the entire performance security shall be forfeited to the City. All forfeited performance securities shall be used for the purpose of promoting recycling within the City. (Added by Ord. 1217, adopted 8-17-07)

**SECTION 5870. EXEMPTION.**

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. 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. The WMP Compliance Official may request that staff from the Sanitation Districts of Los Angeles County (LACSD) attend this meeting or may require the applicant to request a separate meeting with LACSD staff. Based on the information supplied by the applicant and, if applicable, LACSD 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 and Safety 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 inform the applicant in writing. The applicant shall have thirty (30) days to resubmit a WMP in full compliance with Section 5830. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 5830, the WMP Compliance Official shall deny the WMP in accordance with Section 5850.

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**SECTION 5880. APPEAL.**

The applicant may appeal any ruling of the WMP Compliance Official to a Hearing Officer. Notice of any appeal from the ruling of the WMP Compliance Official must be filed within ten (10) days of the date that such ruling is made. The decision of the Hearing Officer upon such appeal, relative to any matter within the jurisdiction of the WMP Compliance Official, shall be final and shall not be appealable to the City Council or to any other City body or official.

**SECTION 5890. ENFORCEMENT.**

A. Violation of any provision of this chapter 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 attorney's fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter, as permitted by law.

B. Violation of any provision of this chapter shall constitute a misdemeanor punishable per Section 1200 of the Downey Municipal Code. A violation of any provision of this chapter is declared to be a public nuisance. The penalties and remedies established by this chapter are cumulative and not exclusive.

C. Enforcement of this chapter shall be undertaken by the City through its Director of Public Works or his or her designee and the City Attorney. The Director of Public Works, his or her designee, or the Building Official shall have the authority to order that work be stopped where any work is being done contrary to the provisions of this chapter. (Added by Ord. 1217, adopted 8-17-07)"

**SECTION 2.** Effective Date. This Ordinance shall become effective thirty (30) days from and after its adoption.

**SECTION 3.** The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

**APPROVED AND ADOPTED** this 8th day of September, 2009.

MARIO A. GUERRA  
MARIO A. GUERRA, Mayor

ATTEST:

KATHLEEN L. MIDSTOKKE  
KATHLEEN L. MIDSTOKKE, City Clerk

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STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            ) ss:  
CITY OF DOWNEY                        )

**I HEREBY CERTIFY** that the foregoing Ordinance No. 09-1252 was introduced at a regular meeting of the City Council of the City of Downey held on the 25<sup>th</sup> day of August, 2009, and adopted at a regular meeting of the City Council of the City of Downey held on the 8<sup>th</sup> day of September, 2009, by the following vote, to wit:

AYES:            Council Members: Bayer, Brossmer, Marquez, Mayor Guerra  
NOES:            Council Member:   None  
ABSENT:         Council Member:   Gafin  
ABSTAIN:        Council Member:   None

**I FURTHER CERTIFY** that a Summary of the foregoing Ordinance No. 09-1252 was published in the Press-Telegram, a newspaper of general circulation in the City of Downey, on August 28, 2009 (after introduction), and on September 11, 2009 (after adoption, including the vote thereon). It was also posted in the regular posting places in the City of Downey on the same dates.

KATHLEEN L. MIDSTOKKE  
KATHLEEN L. MIDSTOKKE, City Clerk

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Appendix A.  
City of Downey Construction & Demolition Ordinance

**DETERMINATION OF AMOUNT OF PERFORMANCE SECURITY TO BE REFUNDED**

The Performance Security is made up of two components, the inert debris that are diverted from a landfill and the other non-inert debris that are diverted from a landfill. The C&D Ordinance requires 100% of the inert debris be diverted and 50% of the non-inert debris be diverted.

One half of the refund is based on the percentage of inert debris that is diverted. The other half is based on the percentage of non-inert debris that is diverted with 50% being the maximum that can be used in the refund formula.

Refund = [(% Inert Debris Diverted / 2) x (Performance Security)] + (% Non-Inert Debris Diverted<sup>1</sup> x Performance Security)

Note 1 - Cannot exceed 50%

For example, assuming that a Project requires a \$6,000 Performance Security, if 100% of the inert debris is diverted and 75% of the non-inert debris is diverted:

$$\text{Refund} = [(100\% / 2) \times (\$6,000)] + (50\% \times \$6,000)$$

$$\text{Refund} = \$3,000 + \$3,000 = \$6,000$$

For example, assuming a project requires a \$10,000 Performance Security, if 80% of the inert debris is diverted and 30% of the non-inert debris is diverted:

$$\text{Refund} = [(80\% / 2) \times (\$10,000)] + (30\% \times \$10,000)$$

$$\text{Refund} = \$4,000 + \$3,000 = \$7,000$$