



1           **WHEREAS**, the proposed ordinance is categorically exempt from the  
2 requirements of California Environmental Quality Act (“CEQA”) per Section 15308,  
3 “Actions by Regulatory Agencies for Protection of the Environment” of the CEQA  
4 Guidelines, which exempts actions taken by regulatory agencies for protection of the  
5 environment; and  
6

7  
8           **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**  
9 **ORDAIN AS FOLLOWS:**

10  
11           **SECTION 12-11 CONSTRUCTION AND DEMOLITION DEBRIS**  
12 **RECYCLING**

13  
14           **12-11.1**                   **Purpose.**

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16           This Article is adopted in order to supplement the provisions of the California  
17 Integrated Waste Management Act of 1989 which requires that each local jurisdiction  
18 in the state Divert 50% of discarded materials from landfills and aid in compliance  
19 with the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D).  
20 These requirements shall apply to affected projects as specified in this chapter.  
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22           **12-11.2**                   **Definitions (A-Z).**

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24           As used in this section:

25  
26           **Applicant.** Any individual, firm, limited liability company, association,  
27 partnership, political subdivision, government agency, municipality, industry, public  
28 or private corporation, or any other entity whatsoever who applies to the City for the  
29 applicable permits to undertake any construction, demolition, or renovation project  
30 within the City.  
31

32           **Building Official.** The designated staff person(s) authorized and responsible  
33 for implementing this Chapter.  
34

35           **Construction.** The building of any facility or structure or any portion thereof  
36 including any tenant improvements to an existing facility or structure. Construction  
37 refers to SIC Codes 1521 through 1794, 1796, and 1799.  
38

39           **Construction and Demolition Debris.** Discarded materials, packaging, and  
40 rubble resulting from Construction, Renovation or Demolition operations on any  
41 pavements, houses, commercial buildings, or other structures.  
42

43           **Conversion Rate.** The rate set forth in the standardized Conversion Rate Table  
44 approved by the City pursuant to this Article for use in estimating the volume or  
45 weight of materials identified in a Debris Recycling Statement.  
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1 **Covered Project.** Shall have the meaning set forth in Section 12-11.3.A. of this  
2 Chapter.

3  
4 **Debris Recycling Statement.** A form completed and approved pursuant to  
5 Section 12-11.4 of this Chapter, submitted by the Applicant for any Covered or  
6 Noncovered Project.

7  
8 **Demolition.** The decimating, razing, ruining, tearing down or wrecking of any  
9 facility, structure, pavement or building, whether in whole or in part, whether interior  
10 or exterior. Demolition refers to SIC Code 1795.

11  
12 **Divert.** To use material for any purpose other than disposal in a landfill.

13  
14 **Diversion Requirement.** The diversion of one-hundred (100) percent of the  
15 asphalt, concrete and similar material and at least 50%, by weight, of all other  
16 Construction and Demolition Debris generated by the Project, unless the Applicant  
17 has been granted an Infeasibility Exemption pursuant to Section 12-11.4.E.5. of this  
18 Chapter, in which case the Diversion Requirement shall be the diversion of one-  
19 hundred (100) percent of the asphalt, concrete and similar material and the maximum  
20 feasible diversion of all other Construction and Demolition Debris generated by the  
21 Project, as established by the Building Official for the Project.

22  
23 **Franchise Agreement.** The agreement between the City and its contractor  
24 pursuant to California Public Resources Code section 40059(a) for solid waste,  
25 recyclable materials and organic materials services.

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27 **Hearing Officer.** Shall have the meaning set forth in 12-11.6 of this Chapter.

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29 **Noncovered Project.** Shall have the meaning set forth in 12-11.3.B of this  
30 Chapter.

31  
32 **Performance Security.** Any performance bond, surety bond, cashier's check,  
33 letter of credit, or certificate of deposit submitted to the City pursuant to Section 12-  
34 11.4.D of this Chapter.

35  
36 **Project.** Any activity which requires an application for a building permit and/or  
37 a Demolition permit or any similar permit from the City.

38  
39 **Recycling.** The process of collecting, delivering, sorting, cleansing, treating,  
40 and reconstituting materials that would otherwise become solid waste, and returning  
41 them to the economic mainstream in the form of raw material for new, Reused, or  
42 reconstituted products which meet the quality standards necessary to be used in the  
43 marketplace.

44  
45 **Renovation.** Any change, addition, or modification in an existing structure.  
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1       **Reuse.** Further or repeated use of Construction or Demolition Debris.  
2

3       **Salvage.** The controlled removal of Construction or Demolition Debris from a  
4 permitted building or demolition site for the purpose of recycling, reuse, or storage  
5 for later recycling or reuse.  
6

7       **Summary Report.** A form completed pursuant to Section 12-11.5.B of this  
8 Chapter, summarizing the Diversion of Construction and Demolition Debris  
9 generated by a Covered Project.  
10

11       **12-11.3            Diversion of Construction and Demolition Debris**  
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13       **a.    Thresholds for Covered Projects.** The provisions of this chapter shall  
14 apply to all Construction, Demolition and/or Renovation Projects within the City with  
15 a permit valuation in excess of \$75,000 as determined by the City's Building Official  
16 or designee. The \$75,000 threshold shall be calculated as the total or projected costs  
17 of Construction, Demolition and/or Renovation. Notwithstanding the foregoing,  
18 Covered Projects shall include any Project involving only Demolition with a permit  
19 valuation in excess of \$25,000.  
20

21       **b.    Non-Covered Projects.** Applicants for Projects that do not meet the  
22 valuation threshold requirement set forth in Section 12-11.3.A shall be encouraged to  
23 meet the Diversion Requirement standards set forth in this chapter.  
24

25       **c.    Compliance as a Condition of Approval.** Compliance with the  
26 provisions of this chapter shall be included as a condition of approval on all building  
27 and/or Demolition permits issued for Covered Projects. The City has entered into an  
28 exclusive Franchise Agreement, which provides Construction and Demolition Debris  
29 collection services for residential and commercial customers. Applicants may  
30 comply with this chapter in one of two ways:  
31

32           1.    Applicants may use the Construction and Demolition Debris  
33 collection services of the City's contractor. As provided in the Franchise  
34 Agreement, the City's contractor must provide Construction and Demolition  
35 Debris collection upon the request of residential and commercial customers; or  
36

37           2.    Applicants may elect to not use the City's Contractor if they meet  
38 one of the exceptions to the exclusivity of the Franchise Agreement with regard  
39 to Construction and Demolition Debris for:  
40

41                   (a)   Commodities;

42                   (b)   Materials hauled by owner or occupant, or its contractor; or  
43

44                   (c)   Donated materials.  
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1 **12-11.4**      **Debris Recycling Statements**  
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3        **a. Submission of Debris Recycling Statements.** Applicants for building  
4 and/or Demolition permits involving Covered Projects shall complete and submit a  
5 Debris Recycling Statement (DRS) on a form provided by the City. The completed  
6 DRS form shall indicate whether or not the Applicant intends to use the City's  
7 contractor for its Construction and Demolition Debris collection services.  
8

9        **b. Selection of City's Contractor.** If the Applicant's DRS form indicates  
10 that the City's contractor will provide Construction and Demolition Debris collection  
11 services, either because the Applicant does not fall within one of the exceptions to the  
12 exclusive franchise or because the Applicant falls within such an exception but  
13 chooses to have its Construction and Demolition Debris collected by the City's  
14 contractor, the Applicant shall make arrangements directly with the City's contractor  
15 for the collection of Construction and Demolition Debris. Once the Applicant  
16 contacts the City's contractor for Construction and Demolition Debris collection  
17 services and makes a good faith effort to provide Construction and Demolition Debris  
18 for collection by the City's contractor, the Applicant will be deemed to have complied  
19 with this Chapter so long as the Applicant submits a Summary Report pursuant to  
20 Section 12-11.5 of this Chapter.  
21

22        **c. Election to Not Use the City's Contractor.** Applicants that indicate on  
23 their DRS form that they will not use the City's contractor for Construction and  
24 Demolition Debris collection must include and indicate all of the following on the  
25 completed DRS form:  
26

- 27            1. The specific exception of the Franchise Agreement under which the  
28 Applicant may refuse Construction and Demolition Services by the City's  
29 contractor;
- 30            2. The estimated volume or weight of the Construction and Demolition  
31 Debris, by type of material generated;
- 32            3. The estimated volume or weight of materials, by material type,  
33 that can feasibly be Diverted via reuse or recycling;
- 34            4. The vendor or facility that the Applicant proposes to use to  
35 collect and/or receive the Diverted material; and,  
36            5. The estimated volume or weight of materials that will be  
37 deposited in a landfill.  
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43 For the purposes of this section, the Applicant shall use standardized  
44 Conversion Rates, approved by the City, to estimate the volume and weight of  
45 materials identified in the DRS.

1 Applicants that elect not to use the City's contractor may not rely on one of the  
2 above-described exceptions for waste generated by human activity other than  
3 Construction and Demolition. Applicant shall arrange for the collection of  
4 such waste on a weekly basis by the City's contractor.  
5

6 **d. Performance Security.** Applicants for all Covered Projects that  
7 have elected not to use the City's contractor shall submit a Performance  
8 Security with the DRS. The amount of the Performance Security shall be  
9 calculated as the lesser of three (3) percent of total Project cost or \$10,000.  
10 Acceptable forms of Performance Security include the following: performance  
11 bonds; surety bonds; cashier's checks; letters of credit drawn on an established  
12 California bank; and certificates of deposit. The City's Building Official may  
13 waive the Performance Security if the total security required pursuant to this  
14 Section would be fifty (50) dollars or less.  
15

16 **e. Review of Debris Recycling Statements**

17  
18 1. **Timeframe for Review.** The Building Official will review  
19 the DRS and advise the applicant within five (5) working days of receipt  
20 of the DRS of the decision regarding approval or non-approval.  
21

22 2. **Approval of Debris Recycling Statement.** No building,  
23 demolition or similar permit shall be issued unless and until the Building  
24 Official has approved the DRS for the project. A DRS shall only be  
25 approved if the Building Official determines that the following conditions  
26 have been met:  
27

28 (a) The DRS provides all of the information required by this  
29 Chapter; and,  
30

31 (b) The DRS form indicates that the Applicant elects to use  
32 the services of the City's contractor for Construction and Demolition Debris  
33 collection; or  
34

35 (c) The DRS form indicates that the Applicant elects not to  
36 use the City's contractor; and  
37

38 1. The Applicant has submitted an appropriate  
39 Performance Security in compliance with this Section ; and  
40

41 2. The DRS indicates that 100% of the asphalt,  
42 concrete and similar material, and at least 50%, by weight, of  
43 all other Construction and Demolition Debris generated by the  
44 Project as a whole will be Diverted; or  
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3. The DRS indicates that 100% of the asphalt, concrete and similar material will be Diverted, and has obtained an exemption pursuant to Section (d) below; or

4. The DRS indicates that the Project will generate a negligible amount of Construction and Demolition Debris. The determination of whether the Project will generate a negligible amount of Construction and Demolition Debris shall be at the discretion of the Building Official.

If the Building Official determines that the Applicant has met the conditions set forth above, the DRS shall be marked "Approved". A copy of the approved DRS shall be returned to the Applicant.

**3. Non-approval of Debris Recycling Statement.** If the Building Official determines that the Applicant has failed to meet one or more of the conditions set forth above, the DRS will be returned to the Applicant requesting full documentation of the reasons that the requirements of this Chapter cannot be met, or returned to the Applicant marked "Denied". If the DRS is returned marked "Denied", it shall be accompanied by a statement of reasons for denial. No building permit shall be issued for a project until the submitted DRS has been approved by the Building Official.

**4. Emergency Demolition.** No DRS is required where an authorized official of the City has made a determination that immediate Demolition is required to protect the public health or safety from imminent peril.

**5. Infeasibility Exception.**

(a) Application of this Section: This Section 12-11.4.E. applies only to Applicants for Covered Projects that have elected not to use the City's contractor.

(b) DRS Form: If an Applicant 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 DRS required under Section 12-11.4. The Applicant shall indicate on the DRS the maximum rate of diversion and/or quantity of material 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.

(c) Meeting with Building Official: The City Building Official shall review the information supplied by the Applicant and may meet with

1 the Applicant to discuss possible ways of meeting the Diversion  
2 Requirement. Upon request of the City, the Building Official may request  
3 that staff from the Alameda County Waste Management Authority attend  
4 this meeting. Based on the information supplied by the Applicant and, if  
5 applicable, Alameda County Waste Management Authority staff, the  
6 Building Official shall determine whether it is possible for the Applicant  
7 to meet the Diversion Requirement.  
8

9 (d) Granting of Exemption: If the Building Official determines  
10 that it is infeasible for the Applicant to meet the Diversion Requirement  
11 due to unique circumstances, the Building Official shall determine the  
12 maximum feasible diversion rate for each material and shall indicate this  
13 rate on the DRS submitted by the Applicant. The Building Official shall  
14 return a copy of the DRS to the Applicant marked "Approved for  
15 Infeasibility Exemption" and shall notify the Building Department that the  
16 DRS has been approved.  
17

18 (e) Denial of Exemption: If the Building Official determines that  
19 it is possible for the Applicant to meet the Diversion Requirement, he or  
20 she shall so inform the Applicant in writing. The Applicant shall have 30  
21 days to resubmit a DRS form in full compliance with Section 12-11.4 of  
22 this Chapter. If the Applicant fails to resubmit the DRS, or if the  
23 resubmitted DRS does not comply with Section 20.64.040 of the Albany  
24 Municipal Code, the Building Official shall deny the DRS in accordance  
25 with Section 20.64.040.E. of the Albany Municipal Code.  
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## 27 **12-11.5            Compliance**

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29 **a. Weighing of Construction and Demolition Debris.** Applicants  
30 electing not to use the City's contractor shall make every reasonable effort to  
31 assure that all Construction and Demolition Debris Diverted and/or deposited  
32 in a landfill is measured and recorded using the most accurate method of  
33 measurement available. To the extent possible, all Construction and  
34 Demolition Debris shall be weighed by measurement on scales. Such scales  
35 shall be in compliance with all regulatory requirements for accuracy and  
36 maintenance. A volumetric measurement shall be used for all Construction and  
37 Demolition Debris for which weighing is not practical due to small size or  
38 other considerations. Volumetric measurements shall be converted to weight  
39 by using the Conversion Rates approved by the City for this purpose.  
40

41 **b. Determination of Compliance.** Within 30 days after the  
42 completion of any Covered Project, the Applicant shall complete and submit a  
43 Summary Report on a form provided by the City. Applicants may demonstrate  
44 compliance with this Chapter in one of two ways:  
45

1           1. Applicants may demonstrate compliance by submitting a  
2 Summary Report indicating that it used the services of the City's  
3 contractor for Construction and Demolition Debris collection; or  
4

5           2. Applicants that did not use the City's contractor for  
6 Construction and Demolition Debris collection shall so indicate on the  
7 Summary Report and include supporting documentation such as receipts  
8 and weight tags for Construction and Demolition Debris generated by the  
9 Covered Project. The Building Official shall review the Summary Report  
10 and its supporting documentation to determine whether the Applicant has  
11 achieved the Diversion Requirement. Such determination shall be based  
12 upon the requirements of this Chapter and the following guidelines:  
13

14           (a)           Full Compliance: The Applicant shall be found to have  
15 fully complied with this Chapter if the Building Official determines that the  
16 Applicant has complied with the Diversion Requirement applicable to the  
17 Project. If the Building Official determines that the Applicant has fully  
18 complied with the Diversion Requirement applicable to the Project, he or she  
19 shall cause the full amount of the Performance Security to be released to the  
20 Applicant.  
21

22           (b)           Good Faith Effort to Comply: If the Building Official  
23 determines that the Diversion Requirement has not been achieved, he or she  
24 shall determine on a case-by-case basis whether the Applicant has made a good  
25 faith effort to comply with this Chapter. In making this determination,  
26 consideration may be given to information submitted by the Applicant,  
27 including but not limited to the availability of markets for the Construction and  
28 Demolition Debris that was not Diverted, the size and nature of the Project, and  
29 the documented efforts of Applicant to Divert Construction and Demolition  
30 Debris and the barriers encountered. If the Building Official determines that  
31 the Applicant has made a good faith effort to comply with the Diversion  
32 Requirement and documentation provisions herein above set forth, he or she  
33 shall release the Performance Security, or a portion thereof, to the Applicant.  
34 Any portion of the Performance Security not released to the Applicant shall be  
35 forfeited to the City, and shall be used for the purposes of promoting Recycling  
36 within the City.  
37

38           (c)           Noncompliance: If the Building Official determines that  
39 (1) the Diversion Requirement applicable to a Covered Project has not been  
40 achieved; (2) the Applicant has failed to submit the documentation required by  
41 this Chapter within the required time period; or (3) that a good faith effort was  
42 not made, then the Applicant shall be in "Non Attainment" status and the  
43 Performance Security shall be forfeited to the City. All forfeited Performance  
44 Securities shall be used for the purposes of promoting Recycling within the  
45 City.  
46

1           **c. Right to Monitor and Inspect.** The City shall have the right to  
2 inspect all Covered Projects subject to this Chapter to determine levels of  
3 actual Diversion activities and validate the information contained in the DRS  
4 and Summary Report. Upon request by the City, an Applicant electing not to  
5 use the City's contractor shall provide documentation, papers and records  
6 relating to the disposal of Construction and Demolition Debris for an affected  
7 Project.

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9           **d. Supporting Documentation.** Applicants for all Covered Projects  
10 that have elected not to use the City's Contractor shall retain receipts and  
11 weight tags for the quantities of materials Reused, Salvaged, Recycled and  
12 deposited in a landfill as indicated in the Summary Report for a period of one  
13 year following the final inspection and issuance of a temporary or final  
14 certificate of occupancy. Applicant shall make such records available to the  
15 City for inspection and copying upon request.

16  
17           **e. Targeted Materials.** In furtherance of the goals established by this  
18 Chapter, the Community Development Director shall establish a list of materials that  
19 could potentially be Reused, Recycled or Salvaged, and may amend the list based  
20 upon local markets and conditions, the economic feasibility of compliance and the  
21 availability of local recycling facilities.

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24           **12-11.6 Appeals.**

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26           Any Applicant affected by any decision, action or determination made by the  
27 Building Official regarding this Section may file with the City Clerk a written appeal  
28 within ten (10) days of such decision, action or determination, setting forth in detail  
29 the facts supporting the Applicant's appeal. The City Administrator shall appoint a  
30 Hearing Officer who shall hear the appeal within thirty (30) days from the date of  
31 filing. The Hearing Officer shall render a written decision within fourteen (14) days  
32 of the close of the hearing. The Hearing Officer's determination shall be final.

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35           **12-11.7 Enforcement.**

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37           Notwithstanding any other provision of this Chapter, violations of this Chapter  
38 may be enforced in the following manner: (1) Pursuant to Chapter 1 of this Code; (2)  
39 by a stop work order issued by the Building Official where work on the Project has  
40 already commenced; or (3) in any other manner provided by law.

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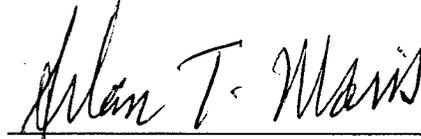
**PASSED AND ADOPTED** by the City Council of the City of Albany, after a duly noticed public hearing, at its meeting held on the 4th day of December, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:



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Mayor Allan Maris