

ORDINANCE NO. 523

AN ORDINANCE OF THE CITY OF FOSTER CITY ADDING CHAPTER 15.44, RECYCLING AND SALVAGING OF CONSTRUCTION AND DEMOLITION DEBRIS, OF TITLE 15, BUILDINGS AND CONSTRUCTION, TO THE FOSTER CITY MUNICIPAL CODE

CITY OF FOSTER CITY

THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES FIND AND ORDAIN as follows:

Section 1. The City Council of the City of Foster City, California, hereby finds and determines:

WHEREAS, the City is committed to protecting the public health, safety, welfare and environment; and

WHEREAS, to meet these goals, the City needs to promote the reduction of solid waste and reduce the stream of solid waste going to landfills; and

WHEREAS, under California law as embodied in the California Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.), Foster City is required to prepare, adopt and implement source reduction and recycling plans to reach landfill diversion goals, and is required to make substantial reductions in the volume of waste materials going to landfill, or face potential fines of up to \$10,000 per day; and

WHEREAS, debris from construction and demolition of buildings and alterations represents a portion of the volume presently coming from Foster City and much of this debris is particularly suitable for recycling and reuse; and

WHEREAS, the City's commitment to the reduction of waste and to comply with state law requires the establishment of programs such as those for recycling and salvaging of construction and demolition (C&D) materials; and

WHEREAS, the City Council recognizes that requiring C&D debris to be recycled and reused may in some respects add modestly to the cost of demolition and in other respects may make possible some cost recovery and cost reduction.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FOSTER CITY, CALIFORNIA, ORDAINS THAT:

Section 2. A new Chapter 15.44 shall be added to Title 15 of the Foster City Municipal Code as follows:

Chapter 15.44

**RECYCLING AND SALVAGING OF
CONSTRUCTION AND DEMOLITION DEBRIS**

Sections:

15.44.010	Definitions
15.44.020	Deconstruction, Salvage and Recovery
15.44.030	Landfill Diversion Requirements
15.44.040	Information Required Before Issuance of Permit
15.44.050	Deposit Required
15.44.060	On Site Practices
15.44.070	Reporting
15.44.080	Enforcement/Violations
15.44.090	Responsible Party

15.44.010 - Definitions. For the purposes of this chapter, certain terms used herein are defined as set forth below:

“Addition” means an extension or increase in floor area or height of a building or structure.

“Alteration” means, for the purposes of the recycling and diversion requirements in this chapter, any change, addition, or modification in construction or occupancy of a building.

“Alternative Daily Cover (ADC)” means materials other than soil, such as ash and cement kiln dust, treated auto shredder waste, construction and demolition waste, compost, green material, sludge, shredded tires, foam products, and geo-synthetic fabric that have been approved by the California Integrated Waste Management Board for use as an overlay on an exposed landfill face.

“Applicant” means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, industry, public or private corporation, property owner, contractor, architect or any other entity whatsoever who applies to the City for the applicable permits to undertake any construction, demolition, or renovation project within the City.

“Building” means, for the purposes of this chapter, any residential, commercial, industrial, or institutional structure, but does not include fences, gates or appurtenances located on a premise.

“Contractor” means any person or entity holding, or required to hold, a contractor's license of any type under the laws of the State of California, or who performs (whether as

contractor, subcontractor or owner-builder) any construction, demolition, remodeling, renovation, or landscaping service relating to buildings or accessory structures in Foster City.

"Construction and Demolition (C&D) Debris" means and includes:

- (a) Discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard and lumber from the construction or demolition of a Structure or Hardscape Improvement as part of a construction or demolition project or from the renovation of a structure, hardscape improvement, and/or landscaping, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for a construction project;
- (b) Clean cardboard, paper, plastic, wood and metal scraps from any construction and/or landscape project; and
- (c) Minimal amounts of other non-hazardous wastes that are generated at the construction or demolition projects provided such amounts are consistent with best management practices of the industry.

"Covered Project" means, the construction of any completely new residential or commercial building, the demolition or removal of any residential or commercial building, the alteration of any commercial building when the value of such alteration exceeds \$100,000, the addition or alteration to any residential building when the value of such addition exceeds \$100,000, or any roofing project. Notwithstanding the above, in those cases in which a dangerous situation has been determined to exist by the Building Division and/or the Police Department, the recycling requirements of this ordinance may be waived in total or in part by the Community Development Director.

"Deconstruction" means the soft demolition (careful dismantling and/or sorting for recycling and reuse) of any facility, structure, hardscape improvement or building through a planned dismantling and salvaging of reusable materials and parts.

"Demolition" means, for the purposes of the recycling and diversion requirements in this chapter, the deconstructing, destroying, tearing down, or wrecking of any facility including its foundation. As used herein, the word demolition shall include any partial demolition and any interior demolition of a building.

"Designated Recyclable and Reusable Materials" means that portion of C&D Debris that includes the following:

- (a) Masonry building materials including all products generally used in construction including, but not limited to asphalt, concrete, rock, stone and brick;
- (b) Wood materials including any and all dimensional lumber, fencing or construction wood that is not chemically treated, creosoted, contaminated or painted;

- (c) Vegetative materials including trees, tree parts, shrubs, stumps, logs, brush or any other type of plants that are cleared from a site for construction or other use;
- (d) Metals including all metal scrap such as, but not limited to, pipes, siding, window frames, doorframes and fences;
- (e) Roofing materials including wood shingles as well as asphalt, stone and slate based roofing material;
- (f) Salvageable materials and structures, including, but not limited to gypsum wallboard, doors, windows, mantelpieces, cabinets, lighting fixtures, toilets, sinks, bathtubs, appliances, decorative molding, flooring, carpeting, reusable hardware, bricks and decorative tiles in good repair; and
- (g) Any other materials which the Community Development Director or designee determines can be recycled or reused due to the identification of a recycling facility, reuse facility, or market accessible to Foster City, including facilities which can further sort mixed C&D debris through mechanical and/or manual processes in order to remove additional materials for reuse or recycling.

“Diversion” means any activity, including recycling, source reduction, reuse, deconstruction, or salvaging of materials, which causes materials to be diverted from disposal in landfills or incinerators and instead put to use as the same or different product.

“Hardscape Improvements” means any improvement (non-building) including but not limited to swimming pools, driveways, parking lots, walkways, patios, and decks.

“Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting discarded materials that meet the quality standards necessary to be reused, remanufactured or processed.

“Salvage” means the controlled removal of Designated Recyclable and Reusable Materials from C&D Debris, from a covered project, for the purpose of recycling, reuse, or storage for later recycling or reuse.

“Structure” means anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on the ground.

15.44.020 - Deconstruction, Salvage, and Recovery—Optional.

- (1) Structures and/or hardscape improvements planned for demolition shall be made available for deconstruction, salvage and recovery prior to demolition.
- (2) It shall be the responsibility of the owner, the general contractor and all subcontractors to recover the maximum feasible amount of salvageable materials prior to demolition.

- (3) Recovered and salvaged material from the deconstruction phase shall qualify in meeting the diversion requirements of this Chapter.
- (4) Recovered or salvaged materials may be given or sold on the premises, or may be removed to a reuse warehouse or other reuse facility for storage or sale.

15.44.030 - Landfill Diversion Requirements.

- (1) It is required that at least the following specified percentages of C&D Debris waste tonnage generated from every Covered Project shall be diverted from landfills by using recycling, reuse, salvage and other diversion programs:
 - a. All full Demolition Projects (Residential and Commercial): A minimum of fifty percent (50%) of total generated C&D debris tonnage from demolition projects shall be diverted.
 - b. All New Construction Projects (Residential and Commercial): Projects shall be required to divert a minimum of fifty percent (50%) of total generated C&D debris tonnage.
 - c. All Roofing Projects (Residential and Commercial): Covered projects that replace wood shake, tile, concrete, or composite, shall also divert a minimum of fifty percent (50%) of total C&D debris tonnage generated.
 - d. Commercial Alteration (Tenant Improvement) Projects: At least fifty percent (50%) of total generated C&D debris tonnage from alteration projects whose value exceeds \$100,000 shall be diverted.
 - e. Residential Additions and Alterations: At least fifty percent (50%) of total generated C&D debris tonnage from residential additions/alterations whose value exceeds \$100,000 shall be diverted.
- (2) Separate calculations prepared by the applicant and certified by the Chief Building Official shall be required for the demolition portion and for the construction portion of projects involving both demolition and construction.

15.44.040 - Information Required Before Issuance of Permit.

- (1) Applicants for projects affected under this Chapter shall submit a properly completed "Waste Management Plan" (WMP) on a form(s) provided by the City, and submit the form(s) to the Building Inspection Division, as a part of the building or demolition permit process. The WMP shall accurately estimate the tonnage of C&D Debris to be generated from the project, and other information regarding plans for diverting materials generated by the project. Approval of complete and accurate form(s) shall be a condition precedent to issuance of any building or demolition permit.

- (2) The WMP shall indicate, at a minimum, all of the following: (1) the estimated volume or weight of project Construction and Demolition Debris, by materials type, to be generated; (2) the estimated maximum volume or weight of such materials that can feasibly be diverted via reuse or recycling; (3) the vendor or facility that the Applicant proposes to use to collect or receive that material; and (4) the estimated volume or weight of Construction and Demolition Debris that will be land filled. 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.
- (3) The Chief Building Official will review the form for the purpose of confirming the accuracy of the estimated waste generation and gathering data on the amount of waste generated for the project in the City.
- (4) The applicant shall collect during the project, and submit to the Building Department upon project completion, copies of the following: (1) weight tickets, (2) an inventory of reused items, (3) receipts and other records from all recipients of discarded material that demonstrate the reuse, recycling, and disposal of all material generated by and hauled from the project, and (4) such other documentation as necessary to establish compliance with the approved waste management plan.

15.44.050 - Deposit Required.

- (1) As a condition precedent to issuance of any permit for a building or a demolition permit that involves the production of solid waste destined to be delivered to a landfill, the applicant shall post a cash deposit in the amount as set forth in the most current City Council approved master fee schedule, for each estimated ton of generated construction and/or demolition debris.
- (2) The deposit shall be returned, without interest, in total or pro rata, upon proof to the satisfaction of the Community Development Director or designee, that no less than the required percentages or proven proportion of those percentages of the tons of debris generated by the demolition and/or construction project have been diverted from landfills and have been recycled or reused. If a lesser percentage of tons or cubic yards than required are diverted, a proportionate share of the deposit will be returned. The Deposit shall be forfeited entirely if there is a failure to comply with the requirements of this chapter.
- (3) Deposits that qualify for refund, but that have gone unclaimed for a period exceeding sixty (60) days past the project completion date, the unclaimed deposit shall be considered forfeited.
- (4) Forfeited deposits shall be turned over to a fund designated to further promote the development and expansion of recycling and waste reduction programs.

15.44.060 - ON-SITE PRACTICES

- (1) During the term of the demolition or construction project, the contractor shall recycle or divert the required percentages of materials, and keep written records thereof in tonnage or in other measurements approved by the Community Development Director or designee that can be converted to tonnage. The Community Development Director or designee will evaluate the records for each project to gauge the percentage of materials recycled, salvaged and/or reused from the project. Failure to keep accurate written records shall constitute a violation of this Chapter.
- (2) The diversion of a minimum of the required percentages of the C&D Debris shall be measured separately with respect to the demolition segment and the construction segment of a project where both demolition and construction are involved.
- (3) Separate calculations and reports will be required from the applicant and shall be submitted to the building department for the demolition and for the construction portion of projects involving both demolition and construction.

15.44.070 – Reporting.

- (1) Within sixty (60) days following the completion of the demolition phase of a covered project, and again within sixty (60) days following the completion of the construction phase of a covered project, the contractor shall, submit documentation to the Building Division which demonstrates compliance with the requirements of this Chapter.
- (2) The documentation shall consist of a final completed form describing diversion activities and showing actual tonnage data for recycled, diverted, and disposed materials, supported by originals or certified photocopies of receipts and weight tags or other records of measurement from recycling companies, deconstruction contractors and/or landfill and disposal companies. Receipts and weight tags will be used to verify whether materials generated from the site have been or are to be recycled, reused, or salvaged.
- (3) Any deposit posted pursuant to Section 15.44.060 shall be forfeited if the permittee does not furnish required reports within (60) days following the final inspection or the issuance of any certificate of occupancy.
- (4) On an annual basis, the Community Development Director or designee shall compile a report that, at a minimum, describes the number and type of permits issued, the number and type of projects covered by diversion requirements, the total tonnage generated and the estimated diversion resulting from these projects. Annual summary reports shall be kept on file for a period not less than ten (10) years. Report data may be used for annual reporting purposes to demonstrate compliance with the mandates of AB939—to the California Integrated Waste Management Board.

15.44.080 - Enforcement / Violations.

- (1) Any person violating, or causing or permitting to be violated, any of the provisions of this chapter, and the regulation adopted pursuant hereto, is guilty of a misdemeanor, and each such person, firm or corporation is guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted; and upon conviction of any such violations such person, firm or corporation shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months, or both.
- (2) Notwithstanding any other provision of this code, whenever violation of any section contained in this code is punishable as a misdemeanor, the prosecuting attorney having jurisdiction to prosecute said misdemeanor may specify that the offense is an infraction and proceed with prosecution as an infraction, unless the defendant, at the time of his arraignment or plea, objects to the offense being made an infraction, in which event the complaint shall be amended to charge a misdemeanor and the case shall proceed on a misdemeanor complaint.
- (3) Civil Penalties. Any person who fails or refuses to submit a waste management plan for a Covered Project, shall be liable to the city for a civil penalty of not more than ten thousand dollars plus actual damages incurred by the city per violation per day for as long as the violation continues. In addition to the above described penalty and damages, the city may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses.

The city shall petition the court to impose, assess and recover such sums. In determining amount of liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, and any other factor as justice requires.

- (4) In addition to the penalties provided herein, any condition caused or permitted to exist in violation of a provision of this code is a public nuisance and may be summarily abated as such. Each day that the condition continues it is a new and separate offense. Pursuant to Section 38773.5 of the California Government Code, in any action, administrative proceeding, or special proceeding brought by the city of Foster City to abate a public nuisance, the prevailing party shall be entitled to reasonable attorney's fees. Recovery of attorneys' fees shall be limited as follows:
 - A. To those actions or proceedings where the city has elected to recover attorneys' fees at the initiation of such actions or proceedings.
 - B. The amount of attorneys' fees in any action, administrative action, or special proceeding awarded to a prevailing party shall not exceed the amount of

reasonable attorneys' fees incurred by the city in the action or proceeding.

15.44.090 - Responsible Party.

- (1) Every Applicant and/or owner of property on which a Covered Project occurs shall be responsible for compliance with the provisions of this Chapter.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of the Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the 7th day of November, 2005, and passed and adopted on the 21st day of November, 2005, by the following vote:

AYES: Councilmembers Cox, Koelling, Townsend, Wilder, and Mayor Wykoff

NOES: None

ABSENT: None

ABSTAIN: None



RICK WYKOFF, MAYOR

ATTEST:



THERESE L. CALIC, CITY CLERK