

ORDINANCE NO. 754

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD ADDING CHAPTER 8.40 CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING, TO THE BRENTWOOD MUNICIPAL CODE

WHEREAS, the State of California passed Assembly Bill (AB) 939 in 1989 mandating cities and counties to recycle 50% of their waste stream; and

WHEREAS, the City of Brentwood is committed to protecting public health, safety, welfare and the environment, and as such, promotes the reduction of solid waste; and

WHEREAS, the City of Brentwood passed its Source Reduction and Recycling Element in 1993 to implement recycling programs in an effort to improve its recycling efforts; and

WHEREAS, 10-20% of material generated within Brentwood is comprised of construction and demolition debris that can be recycled; and

WHEREAS, the City established incentive pricing in 2001 to encourage recycling of construction-related materials; and

WHEREAS, recycling of construction and demolition debris furthers Brentwood's commitment to reducing waste and complying with AB 939.

NOW THEREFORE, the City Council of the City of Brentwood does ordain as follows :

Chapter 8.40 is hereby added to the Brentwood Municipal Code to read as follows :

Chapter 8.40 Construction and Demolition Debris Recycling.

Sections :

- 8.40.010 Definitions**
- 8.40.020 Threshold for Covered Projects**
- 8.40.030 Submission of Waste Management Plan**
- 8.40.040 Review of Waste Management Plan**
- 8.40.050 Infeasibility Exemption**
- 8.40.060 Appeal**
- 8.40.070 Submittal of Completed Waste Management Plan**
- 8.40.080 Enforcement**

8.40.010 Definitions

For the purposes of Chapter 8.40, 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 construction, demolition, or renovation projects within the City.

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

C. "Construction and Demolition Debris" or "C&D Debris" means used or discarded materials removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair, or demolition operations on any pavement, house, commercial building, or other structure.

D. "Conversion Rate" means the rate set forth in the standardized Conversion Rate Table approved by the City pursuant to this Article for use in estimating the volume or weight of materials identified in a Waste Management Plan.

E. "Covered Project" shall have the meaning set forth in Section 8.40.020 (A) of this Article.

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

G. "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.

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

I. "Diversion Requirement" means the redirection from the waste stream of at least 50 percent of the total Construction and Demolition Debris generated by a Project via reuse or recycling, unless the Applicant has been granted an Infeasibility Exemption pursuant to Section 8.40.050, in which case the Diversion Requirement shall be the maximum feasible diversion rate established by the WMP Compliance Official for the Project.

J. "Noncovered Project" shall have the meaning set forth in Section 8.40.020 (B) of this Article.

K. "Project" means any activity, which requires an application for a building or demolition permit, or any similar permit from the City.

L. "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.

M. "Renovation" means any change, addition, or modification in an existing structure.

N. "Reuse" means further or repeated use of materials in their original form.

O. "Salvage" means the controlled removal of Construction or Demolition Debris from a permitted building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

P. "Tenant improvements" means a "project" involving structural or other modifications of an existing property resulting in the generation of C&D Debris. "Total costs" means the total construction value of the project using standard commercial and residential valuation formulas.

Q. "Vendor" means a licensed City of Brentwood hauler of commercial recycling material.

R. "Waste Management Plan" means a completed WMP form, approved by the City for the purpose of compliance with this Article, submitted by the Applicant for any Covered Project. Prior to project start, the WMP shall identify the types of C&D Debris materials that will be generated for disposal and recycling. A completed WMP contains actual weight or volume of the material disposed recycled receipts.

S. "WMP Compliance Official" means the Community Development Director or his or her designee.

8.40.020 Threshold for Covered Projects

A. **Covered Projects:** Any construction, demolition, and renovation projects within the City, the total costs of which are, or are projected to be, greater than or equal to \$75,000.00, or which involve the construction, demolition ("Covered Projects") shall comply with this Article 8.40.020 (A). For the purposes of determining whether a project meets the foregoing threshold, all phases of a project and all related projects taking place on a single or adjoining parcels, as determined by the WMP Compliance Official, shall be deemed a single project.

B. **Noncovered Projects:** Applicants for construction, demolition, and renovation projects within the City which are not Covered Projects ("Noncovered Projects") shall be encouraged to divert as much project-related construction and demolition debris as possible.

C. **Building and Demolition Permits:** No building, site development or demolition permit shall be issued for a Covered Project unless and until the WMP Compliance Official has approved a WMP for the project. Compliance with the provisions of this Article shall be listed as a condition of approval on any building, site development or demolition permit issued for a Covered Project.

D. **Projects sponsored by the City or Redevelopment Agency.** All construction, demolition and renovation projects sponsored by the City or Redevelopment Agency shall be considered Covered Projects for the purposes of this chapter. The Project sponsor shall submit a WPM to the official prior to beginning any activities and shall be subject to all applicable provisions of this chapter.

8.40.030 Submission of Waste Management Plan

A. **WMP Forms:** Applicants for building, demolition, or site development permits involving any Covered Project shall complete and submit a Waste Management Plan ("WMP"), on a form provided by the City for this purpose as part of the application packet for the building, demolition, or site development permit. The completed WMP shall indicate all of the following:

1. A list of the C&D debris material types, to be generated;

2. The vendor or facility that the Applicant proposes to use to collect or receive the materials; and

3. Acknowledgement of responsibility-The WMP shall be signed by both the contractor and owner indicating: 1) understanding of consequences of not meeting the 50% diversion requirement including being subject to fines; and 2) they are responsible for the actions of their subcontractors with regard to this diversion requirement.

B. Deconstruction: In preparing the WMP, applicants for building, demolition, or site development 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 landfilling. Materials generated in this process shall be considered divertible C&D debris and included in the amount of waste generated.

8.40.040 Review of Waste Management Plan

A. Approval: Notwithstanding any other provision of this Code, no building, demolition, or site development permits shall be issued for any Covered Project, nor shall any demolition, construction or renovation take place on any Covered Project, unless and until the WMP Compliance Official has approved the WMP. 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 8.40.030 of this Article;
2. The WMP indicates that at least 50 percent of all C&D debris generated by the Project will be diverted.
3. The WMP form has been signed by the contractor and the property owner.

If the WMP Compliance Official determines that these three conditions have been met, he or she shall mark the WMP "Approved" and return a copy of the WMP to the Applicant.

B. Nonapproval: If the WMP Compliance Official determines that the WMP fails to comply with the above listed conditions for approval, he or she shall either:

1. Return the WMP to the Applicant marked "Denied," including a statement of reasons, or
2. Return the WMP to the Applicant marked "Further Explanation Required"

8.40.050 Infeasibility 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 required under Section 8.40.030 above. Increased costs to the Applicant generally will not be a sufficient basis for an exemption unless such costs are extraordinary. The Applicant shall indicate on the WMP the maximum amount 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 City's Solid Waste Division attend this meeting or may require the Applicant to request a separate meeting with Solid Waste Division staff. Based on the information supplied by the Applicant and, if applicable, Solid Waste Division 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 establish a minimum 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."

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 so inform the Applicant in writing. The Applicant shall have 30 days to resubmit a WMP form in full compliance with Section 8.40.030 above. If the Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 8.40.030, the WMP Compliance Official shall deny the WMP."

8.40.060 Appeal

Appeal of a determination made under this chapter shall be made to the City Council pursuant to Section 17.880.003(B)-17.880.003(I) of the Brentwood Municipal Code and shall be limited to: 1) the granting or denial of an exemption; or 2) whether the applicant has made a good faith effort to comply with the WPM.

8.40.070 Submittal of Completed Waste Management Plan

A. Documentation: No permit or approvals related to the project site shall be issued by the City until the applicant complies with the provisions of this Section. The completed WMP must be approved prior to final occupancy, or project completion, in the case of demolitions.

The applicant shall submit documentation to the WMP official along with a completed WMP that demonstrates that the Diversion requirement for the Project has been met in order to receive final occupancy approval or final of demolition permits. This documentation shall include the following:

1. The completed WMP submitted for approval shall list for each construction and demolition material type generated, the actual material volume or weight the project generated, and receipts from both the disposal and recycling facilities and/or licensed haulers and vendors that received each material showing clearly whether the material was disposed or recycled; and

2. Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this Article.

B. Weighing of Wastes: Applicants shall make reasonable efforts to ensure that all C&D debris diverted or landfilled are measured and recorded using the most accurate method available. To the extent practical, all construction and demolition debris shall be weighed on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and

maintenance. For construction and demolition 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 approved by the City for this purpose.

C. Determination of Compliance and Release of Permit: The WMP Compliance Official shall review the information submitted under subsection (A) of this Section and determine whether the Applicant has complied with the Diversion Requirement, as follows:

1. **Full Compliance:** If the WMP Compliance Officer determines that the Applicant has fully complied with the Diversion Requirement applicable to the Project, he or she shall indicate such compliance on the WMP.

2. **Good Faith Effort to Comply:** 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 this Article. 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 chapter, he or she shall so indicate on the WMP.

3. **Noncompliance:** If the WMP Compliance Official determines that the Applicant has not made a good faith effort to comply with this chapter, or if the Applicant fails to submit the documentation required by subsection (A) of this Section within the required time period, then the Applicant shall be in violation of this Article and be liable for a civil penalty, in addition to any other remedy provided by this Article. No certificates of occupancy or other permits or approvals relating to the project site shall be issued by the City until the civil penalty has been paid in full.

8.40.080 Enforcement

A. Criminal Penalties. Any person who violates any provision of this chapter, including but not limited to noncompliance with a WMP, shall be guilty of an infraction. The penalty upon conviction of such person shall be a fine as set forth in section 1.08.040 of this Code.

B. Civil Penalties. Any person who violates any provision of this Article, including but not limited to noncompliance with a WMP, shall be liable to the City for a civil penalty of \$1,000 or 1% of the total cost of the project, whichever is greater. The WMP Compliance Official may, in his or her sole discretion, reduce the amount to the civil penalty in the event of mitigating circumstances.

C. Cumulative Remedies. The foregoing remedies shall be deemed non-exclusive, cumulative and in addition to any other remedy the City may have at law or in equity, including but not limited to injunctive relief to prevent violations of this Chapter.

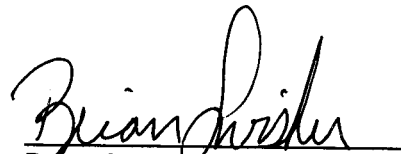
Effective Date: October 1, 2003

THE FOREGOING ORDINANCE was introduced with the first reading waived at a regular meeting of the Brentwood City Council on the 22nd day of July 2003, by the following vote:

AYES: Councilmembers, Beckstrand, Gutierrez, Petrovich, Mayor Swisher
NOES: None
ABSENT: Councilmember Hill
ABSTAIN : None

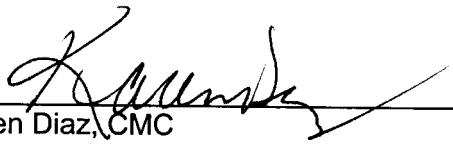
And was adopted at a regular meeting of the Brentwood City Council on the 12th day of August, 2003, by the following vote:

AYES: Councilmembers Beckstrand, Gutierrez, Hill Petrovich, Mayor Swisher
NOES: None
ABSENT: None
ABSTAIN: None



Brian Swisher
Mayor

ATTEST:



Karen Diaz, CMC
City Clerk/Director of Administrative Services