

ORDINANCE NO. 950

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, ADOPTING MUNICIPAL CODE AMENDMENT (A19-002) BY AMENDING DEL MAR MUNICIPAL CODE TITLE 23 (BUILDING CONSTRUCTION), TO ADD A NEW CHAPTER 23.70, SECTIONS 23.70.010, 23.70.020, 23.70.030, 23.70.040, 23.70.050, 23.70.060, AND 23.70.070 ALL RELATING TO THE REGULATIONS FOR DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE

WHEREAS, the State of California through its California Waste Management Act of 1989, Assembly Bill 939 (AB 939), requires that each local jurisdiction develop and implement waste diversion programs; and

WHEREAS, the State of California Green Building Code Standards (CalGreen), requires that a proportion of Construction and Demolition Waste be diverted from the landfill; and

WHEREAS, the City of Del Mar is seeking approval of a Municipal Code Amendment (A19-002), to amend Del Mar Municipal Code (DMMC) Title 23 (Building Construction), to add Chapter 23.70 establishing local regulations relating to the diversion of construction and demolition waste; and

WHEREAS, the intent is to establish a local process for implementation and enforcement of CalGreen construction and demolition waste recycling requirements; and

WHEREAS, the proposed amendments are consistent with the Community Plan and Del Mar's Climate Action Plan goals to divert waste from the landfill and reduce greenhouse gas emissions; and

WHEREAS, the proposed amendments are categorically exempt per CEQA Guidelines Article 19, Section 15301 Class 1 (I)- Existing Facilities which covers the demolition and removal of structures and the associated activity regulated by the proposed ordinance (the recycling of construction and demolition materials) will not have a significant impact on the environment; and

WHEREAS, on May 28, 2019, the Business Support Advisory Committee reviewed the proposed code amendment and recommended approval; and

WHEREAS, on June 10, 2019, the Sustainability Advisory Board reviewed the proposed code amendment and recommended approval; and

WHEREAS, on June 11, 2019, the Planning Commission of the City of Del Mar held a public hearing on application A 19-002, at which time all persons desiring to be heard were heard, and the Planning Commission recommended approval by a vote of 4-0-1; and

WHEREAS, the proposed amendments do not constitute an amendment to the City's certified Local Coastal Program, which means that the final decision on the ordinance will be made by the Del Mar City Council.

NOW THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

SECTION ONE

That a new Chapter 23.70 be added to Title 23 (Building and Construction) as follows:

Chapter 23.70 - CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING

SECTION TWO

That a new Section 23.70.010 be added as follows:

23.70.010 Definitions

- A. "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private for profit or nonprofit corporation, 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.
- B. "Construction" means the building of any improvement or any portion thereof including any tenant improvements to an existing facility or structure.
- C. "Construction and Demolition Debris" ("C&D Debris") means used or discarded materials removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair, deconstruction, or demolition operations on any pavement, house, garage, greenwaste, 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 chapter for use in estimating the volume or weight of materials identified in a waste management plan.
- E. "Deconstruction" means the process of carefully dismantling a building or structure in order to salvage components for reuse and recycling.
- F. "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
- G. "Divert" means to use construction or demolition debris for any purpose other than disposal in a landfill or transformation facility.

H. "Emergency": A sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss of or damage to life, health, property or public services.

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

J. "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.

K. "Remodel" means any change, addition, or modification in an existing structure.

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

N. "Reuse" means the use, in the same form as it was produced, of a material which might otherwise be discarded.

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. "WMP review fee" means the fee for processing WMP applications as adopted by the City Council by resolution, if any.

Q. "WMP report" means the final calculation of construction and demolition debris diversion for the project as described in DMMC 23.70.050.

SECTION THREE

23.70.020 Construction and demolition debris diversion requirements.

Owners and builders generating any construction and demolition debris on a project (residential or commercial) must comply with the minimum requirements regarding recycling or reuse for salvage set forth in the California Green Building Standards Code as adopted by section 23.12 of the Del Mar Municipal Code, Tier I requirements for commercial projects, any applicable state law requirements, and the requirements of this section. Failure to comply with any of the terms of this chapter shall subject the project applicant to the full range of penalty and enforcement mechanisms of this chapter.

SECTION FOUR

23.70.030 Submission of Waste Management Plan.

A. Waste Management Plan (WMP) Forms. Applicants for a Building Permit plan check shall complete and submit a Waste Management Plan on a City-approved form and pay

a WMP review fee, if any, before a building or demolition permit may be issued. The completed WMP shall indicate all of the following:

1. Estimated weight of C&D debris, by materials type, to be generated;
2. Maximum weight of such materials that can feasibly be diverted via reuse or recycling;
3. Vendor or facility that the applicant proposes to use to collect or receive that material;
4. Estimated weight of C&D materials that will be landfilled; and
5. Total square footage of the project.
6. Indicates that the minimum required percentage set forth in DMMC 23.70.020 of all C&D debris generated by the project will be diverted.

B. Calculating Weight of Debris. In estimating the weight of materials identified in the WMP, the applicant shall use the standardized conversion rates approved by the City.

C. Deconstruction. In preparing the WMP, applicants for a building permit plan check involving the removal of all or part of an existing structure shall consider deconstruction, to the maximum extent feasible, and shall make the materials generated thereby available for salvage prior to sending to a landfill.

SECTION FIVE

23.70.040 Review of Waste Management Plan.

A. Approval. Notwithstanding any other provision of this code, no Building Permit shall be issued unless the WMP has been approved. Approval shall not be required, however, where an emergency demolition, as determined by the Planning and Community Development Director, is required to protect public health or safety. The WMP shall not be approved unless it provides all of the information set forth in DMMC 23.70.030.

B. Non-approval. If the WMP is incomplete or fails to indicate that the minimum required percentage set forth in DMMC 23.70.020 of all C&D debris generated by the project will be diverted, the WMP shall be returned to the applicant marked "Denied," including a statement of reasons, and so notify the Community Development Department, which shall withhold permit issuance until the WMP is resubmitted and approved.

SECTION SIX

23.70.050 Compliance with waste management plan.

A. Documentation. Prior to final inspection, the applicant shall submit documentation to the Building Official that the diversion requirement for the project has been met. If the applicant does not submit the required documentation, the applicant may be subject to enforcement action pursuant to DMMC 23.70.070. The documentation for compliance shall include the following:

1. Copies of receipts from the vendor or facility that collected or received each material, showing the actual weight of that material.
2. A copy of the approved WMP for the project adding the actual weight of each material diverted and landfilled.

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

1. Full Compliance. If the applicant has fully complied with the diversion requirement for the project, the final WMP report shall be approved.
2. Good Faith Effort to Comply. On a very limited basis, if the diversion requirement has not been achieved, the Planning and Community Development Director shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply considering the following:
 - a. The availability of markets for the C&D debris landfilled;
 - b. The percent of total waste diverted;
 - b. The size of the project; and
 - c. The documented efforts of the applicant to divert C&D debris.

If the Planning and Community Development Director determines that the applicant has made a good faith effort to comply with this chapter, the Director may approve the final WMP report.

3. Noncompliance. If the applicant has been found to have not made a good faith effort to comply with the diversion requirement applicable to the project, or if the applicant fails to submit the documentation required by subsection A of this

section, then the applicant shall be subject to the enforcement provisions of DMMC 23.70.070. Any penalty assessed must be paid to the City prior to final inspection.

4. Noncompliance Notification and Appeal. Upon a determination of noncompliance, the applicant shall be notified of the WMP report findings. The notice shall be in writing and shall identify the specific area(s) of noncompliance with the WMP and inform the applicant that it has a right to a hearing to appeal the determination pursuant to DMMC 1.12.

SECTION SEVEN

23.70.060 Exemptions.

A. The following project types are exempt from the requirements of this Chapter:

1. Projects exempted from the construction waste disposal and recycling requirements of the State Green Building Standards Code, California Code of Regulations, Title 24, Part 11 (CALGreen Code). The City's Building Department shall maintain an up to date list of exempt project types.

2. Emergency demolition projects, if the projects are required to protect public health or safety, as determined by the Planning and Community Development Director in consultation with the City's Building Official.

B. Infeasibility Exemption Application. For project types that are not exempt per DMMC 23.70.060 A., if unique circumstances make it infeasible for a project applicant to comply with the diversion requirement, the applicant may apply for an exemption at the time that the applicant submits the required 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 unique circumstances that make it infeasible to comply with the diversion requirement.

C. Granting of Exemption. The Director of Planning and Community Development shall not issue an infeasibility exemption unless the Director can make at least one of the following findings:

1. That circumstances exist that are unique to the project to the effect that compliance with the provisions of this chapter would create an unusual burden on the project that is different than that of similarly situated properties.

2. That for a specific project compliance with this chapter would result in minimal or no increase in recycled materials or reduction in waste stream.

3. That diversion of one or more substances involved in the project presents unique and burdensome obstacles and would create an especially onerous economic burden on the project unless diversion of that substance is reduced or eliminated.

If one or more of the above findings may be made for a project, the project may be exempted from compliance with this chapter or determine the maximum feasible reduced diversion rate for each material as reported by the applicant and shall indicate this rate on the WMP submitted by the applicant. A copy of the WMP shall be returned to the applicant marked "Approved for Exemption".

D. Denial of Exemption. If the Director of Planning and Community Development is unable to make any of the findings required by subsection C of this section, the applicant shall be informed in writing. The applicant shall have 30 days to resubmit a WMP form in full compliance with DMMC 23.70.020. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with DMMC 23.70.030, the Director of Planning and Community Development shall deny the WMP in accordance with DMMC 23.70.030. Notwithstanding any other provision of this code, the determination of the WMP compliance officer shall be final.

SECTION EIGHT

23.70.070 Enforcement.

A. Criminal Action. Any applicant who violates or fails to comply with any provision of this chapter shall be guilty of a misdemeanor and subject to the enforcement provisions of provisions of DMMC 1.08.020.

B. Civil Action. The City may redress a violation of, or failure to comply with, any provision of this chapter pursuant to the provisions of DMMC 1.08.080.

SECTION NINE

The City Council finds that approval of this ordinance is categorically exempt per CEQA Guidelines Article 19, Section 15301 Class 1 (I)- Existing Facilities which covers the demolition and removal of structures and the associated activity regulated by the proposed ordinance (the recycling of construction and demolition materials) will not have a significant impact on the environment; and

SECTION TEN

This Ordinance was introduced by the City Council on July 15, 2019.

SECTION ELEVEN

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.


SECTION TWELVE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION THIRTEEN

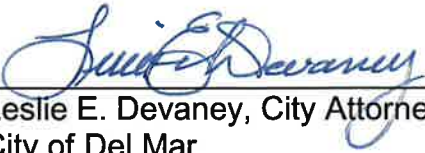
The Ordinance shall take effect and be in force thirty (30) days after the date of adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at the Regular Meeting held this 5th day of August, 2019.



David Druker, Mayor
City of Del Mar

APPROVED AS TO FORM:




Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 950, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 5th day of August, 2019, by the following vote:

AYES: Mayor Druker, Deputy Mayor Haviland, Council Members
Gaasterland, Parks and Worden
NOES: None
ABSENT: None
ABSTAIN: None



Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

