

ORDINANCE NO. 9840 (NEW SERIES)

**AN ORDINANCE ADDING SECTIONS 68.508 THROUGH 68.518 TO
THE COUNTY CODE OF REGULATORY ORDINANCES RELATING TO
DIVERSION OF CONSTRUCTION AND DEMOLITION MATERIALS
FROM LANDFILL DISPOSAL**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that Public Resources Code sections 41780 et seq., also known as the Integrated Waste Management Act, requires each local jurisdiction in the State to divert at least 50% of solid waste from landfills. Every city and county in California may face fines up to \$10,000 a day for not meeting the State law requirement. Reusing and recycling construction and demolition debris is essential to reducing landfill solid waste disposal. Construction and demolition debris waste reduction and recycling programs have been proven to reduce the amount of solid waste deposited in landfills. Except in unusual circumstances it is feasible to divert 70 percent or more of all construction and demolition debris from construction and demolition projects.

Section 2. Title 6, Division 8, of the San Diego County Code of Regulatory Ordinances is amended to add Article II, as follows:

SEC. 68.508. PURPOSE

The purpose of this article is to establish the Construction and Demolition Materials Diversion Program in the unincorporated area of the County. This program is intended to increase diversion of construction and demolition materials from landfills, conserve landfill capacity, extend the useful life of local landfills and avoid potential consequences to the County if it fails to comply with State waste diversion requirements.

SEC. 68.509. DEFINITIONS

For the purposes of this Article, the following definitions shall apply:

(a) "Applicant" means a person who applies to the County of San Diego for a permit for an applicable project.

(b) "Applicable project" means a construction or demolition project subject to a threshold in section 68.510(a).

(c) "Chipping and grinding operation" means an operation or facility that does not produce compost or that mechanically reduces the size of or otherwise engages in the handling of compostable material.

(d) "Construction" means the act of building, making, erecting, remodeling, repairing, renovating, or improving a "structure," as that term is defined in the California Building Code and includes any project for which the County requires a building permit.

(e) "Construction and demolition debris" means nonhazardous waste building material, inert material, soil, packaging, green material and rubble resulting from construction or demolition.

(f) "Conversion rate" means the rate in the standardized Conversion Rate Table approved by the County pursuant to this article for use in estimating the volume or weight of materials identified in a Debris Management Plan (DMP).

(g) "Debris Management Plan (DMP)" means a plan for diverting construction or demolition debris required by this article.

(h) "DMP compliance official" means a person responsible for implementing this article.

(i) "DMP permittee" means a person who is required to divert construction or demolition waste under this article and who has an approved DMP.

(j) "Demolition" means the act of removing, razing or tearing down a structure or any portion of a structure.

(k) "Director" means the director of the County Department of Public Works.

(l) "Divert" means to reuse or recycle construction or demolition debris.

(m) "Diversion requirement" means the requirement in this article to divert a percentage of construction and demolition debris generated by an applicable project.

(n) "Green Material" means any materials related to land development such as yard trimmings, trees, brush and construction and demolition wood waste. Green material does not include food material, bio-solids, mixed solid waste material processes from co-mingled collection, wood containing lead-based paint or wood preservatives, mixed construction or mixed demolition debris.

(o) "Green material processing operations" means a facility or center that processes green material through composting, chipping or grinding operations.

(p) "Inert debris" has the same definition as the term is defined in California Code of

Regulations Title 14, section 17381(k) and means materials such as concrete, soil, asphalt, ceramics and masonry.

(q) "Permitted construction and demolition and inert recycling center" or "CDI center" means a facility or center for which the Local Enforcement Agency has issued an oversight permit to allow the facility or center to receive or process construction, demolition or inert debris.

(r) "Project" means any construction or demolition, which requires a building or demolition permit, or any similar permit.

(s) "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.

(t) "Reuse" means further or repeated use of construction and demolition debris.

(u) "Salvage" means the controlled removal of construction and demolition debris from a permitted building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

SEC. 68.510. THRESHOLD FOR APPLICABLE PROJECTS

(a) An applicable project shall be one in which the total square footage of demolition and/or construction is equal to or greater than 40,000 square feet. In measuring the square footage of a project each floor of a building shall be counted, not just the building's footprint. Projects shall also include paved areas, walkways, driveways, parking areas, decks, patios or any other landscape areas that are demolished, constructed, excavated and/or graded. For the purpose of determining whether a project meets the foregoing thresholds, all phases of a project and all related demolition, construction, excavation or grading occurring on the same or other parcels, as determined by a DMP compliance official, shall be deemed a single project.

(b) All construction and/or demolition projects conducted by the County shall be subject to the thresholds established by this article. The project lead or its contractor shall submit a DMP to the DMP compliance official prior to beginning any activities.

(c) All applicable projects shall comply with this article.

Section 68.512 incorporating Board Direction from February 28, 2007 (6)

SEC. 68.511 DEBRIS MANAGEMENT PLAN

(a) The County Department of Public Works shall be responsible to implement this article.

(b) An applicant for a project subject to a threshold in section 68.510 shall submit a completed County Debris Management Plan (DMP) with an application for a building permit and/or demolition permit to the Department of Public Works. The DMP shall provide the following information:

- (1) The type of project;
- (2) The total square footage of the project;
- (3) The estimated volume or weight of project construction and demolition debris, by material type that the project will generate;
- (4) The maximum volume or weight of construction and demolition debris that can feasibly be diverted via reuse or recycling;
- (5) The estimated volume or weight of construction and demolition debris that will be disposed of in a landfill; and
- (6) The name and address of any person and/ or recycling facility the applicant proposes to use to collect, process or receive construction and/ demolition debris the project will generate.

(c) The County shall prepare a list of recyclers who accept construction and demolition materials in the unincorporated and incorporated areas of the County. The County shall make the list available to any person upon request.

(d) The County shall prepare conversion rates tables that shall be used by an applicant to calculate the volume and weight of construction and demolition debris.

SEC. 68.512. PERFORMANCE GUARANTEE

(a) The applicant for any applicable project shall submit a performance guarantee to the Department of Public Works as a condition of a building or demolition permit.

(b) A performance guarantee may be in the form of any combination of the following: cash deposit, irrevocable letter of credit, assurance bond, or other recognized form of security the County determines is acceptable.

(c) Cash deposits for a performance guarantee shall be deposited in an interest bearing account and returned with interest, to the Debris Management Plan permittee upon the County's determination of full compliance, or prorated based on the degree of compliance. Any forfeited performance guarantee, including interest on a cash deposit will be used first to recover the County's administrative costs related to processing the DMP. Remaining funds shall be used only for programs to develop or improve the infrastructure for construction and demolition debris.

(d) The amount of a performance guarantee required shall be determined by the following schedule:

Performance Guarantee Values

Building Segment	Charge per Sq. Ft.	Maximum Sq. Ft. Subject to Charge
Residential	\$0.20	125,000 detached 100,000 attached
Non-residential	\$0.20	40,000 commercial 75,000 industrial

SEC. 68.513 DEBRIS MANAGEMENT PLAN

(a) During the first 12 months after the effective date of this article an applicable project shall recycle 90 percent of inert construction and demolition debris and 50 percent of all other construction and demolition debris. After this article has been in effect for 12 months an applicable project shall recycle 90 percent of inert debris and 70 percent of all other construction and demolition debris.

(b) Notwithstanding any other provision of this code, no building permit shall be issued for any applicable project unless a DMP compliance official has approved the Debris Management Plan (DMP). Approval shall not be required, however, when emergency demolition is required to protect public health or safety. A DMP compliance official shall approve a DMP if he determines that all of the following conditions have been met:

- (1) The DMP provides all of the information required by section 68.511(b) and
- (2) The DMP complies with subsection (a) above.

SEC. 68.514. INFEASIBILITY EXEMPTION

(a) If it is infeasible for an applicant for an applicable project to comply with all of the

requirements of section 68.513(a) the applicant may apply for an exemption. For the purposes of this section "infeasible" means that there is no recycling, salvage, or construction demolition inert processing (CDI) center or onsite reuse options for all or part of the construction or demolition debris a project will generate within a 50 mile radius of the project area, any location from which the applicant regularly operates it's business, or stores its construction or demolition equipment. The applicant shall apply for the exemption on a form provided by the County at that same time as the applicant submits the DMP required by section 68.511(b).

(b) If a DMP compliance official grants the applicant's request for an exemption, the official shall determine what percentage of construction and demolition debris the applicant is required to recycle. In reaching his determination, the official may consult with any State or local official and the applicant. The official shall issue his determination in writing and serve it under section 11.112 of this code.

(c) Within 15 days from the date the official serves the notice, the applicant shall submit a revised DMP or file an appeal under section 68.517.

SEC. 68.515. COMPLIANCE WITH DEBRIS MANAGEMENT PLAN

(a) For each construction or demolition site for which the DMP permit is issued, the DMP permittee shall maintain a daily log for all construction or demolition debris that leaves the site along with the corresponding receipts from any CDI center, recycling center, vendor, green materials operation or disposal or transfer station facility which accepted debris from the DMP permittee. The log and receipts shall contain the weight of the debris the facility accepted and whether the material was disposed in a landfill or recycled. The log shall be made available to any County inspector or DMP compliance official responsible to insure compliance with this article. The permittee's failure to have the log or the information required by this subsection available for inspection constitutes grounds for suspension of the DMP permit.

(b) After construction or demolition begins, a DMP permittee shall submit evidence to the DMP compliance officer demonstrating that the permittee is complying with the approved DMP. At the end of every quarter thereafter until 180 days after the County issues a certificate of occupancy or for a project with multiple phases, the last certificate of occupancy for the project, the DMP permittee shall submit proof of compliance with the DMP. The permittee shall submit quarterly reports according to the following schedule:

Timeframe	Due Date
January to March	April 15
April to June	July 15
July to September	October 15
October to December	January 15

The first report shall be submitted upon first quarterly due date following the project start date. Example: Project starts February 15th, first quarterly report due April 15th.

(c) Proof of compliance required to satisfy the permittee's obligation under subsection (a) above shall be the following:

- (1) Receipts from each CDI center, recycling center, vendor, green materials operation and disposal or transfer station facility which accepted construction or demolition debris from the DMP permittee, that contain the weight of the debris the facility accepted and whether the material was disposed in a landfill or recycled.
- (2) If a receipt from a recycling center or other facility in paragraph (1) does not contain a statement of the weight of the debris, the DMP permittee shall provide a print out or other verifiable statement of the weight of the debris, produced by a weighing device with a current registration certificate from the County Sealer.
- (3) If it is impracticable to weigh the construction or demolition debris the DMP permittee shall measure the debris and submit a statement of the volume along with the calculation of the weight of the debris using the County's conversion rate table as referenced in section 68.511(d)
- (4) If the material was reused onsite or collected by a third party for salvage, the DMP permittee shall provide a receipt or other proof of diversion including photos or any additional information relevant to determining compliance with the DMP.
- (5) A statement from an authorized representative of the DMP permittee signed under penalty of perjury verifying that the information submitted to the County in compliance with subparagraphs (1)-(4) above is accurate.

(d) If a DMP compliance official determines the DMP permittee has complied with the DMP, the compliance official shall direct that the permittee's performance guarantee be released within 30 days of final DMP submittal. If the compliance officer determines the DMP permittee has not complied with the DMP, the compliance officer shall calculate the percent of the permittee's failure to comply and issue a forfeiture notice to the DMP permittee based upon a sliding scale. The compliance officer shall serve the permittee pursuant to section 11.112 of this code with a statement of compliance or a notice of forfeiture. The permittee shall have 15 days from the date a notice of forfeiture is served to file an appeal of the forfeiture under section 68.517.

SEC 68.516. COUNTY'S RIGHT TO MONITOR, INSPECT AND ENFORCE

(a) As an additional condition of approval of a DMP under section 68.513, the DMP permittee shall consent to allow the County the right to inspect any construction or

demolition site during normal business hours without notice. The DMP permittee shall have the required log available for inspection by the County inspector during normal business hours at each construction or demolition site as required to maintain under section 68.515(a).

(b) If a permittee or any of the permittee's agents or employees refuse to allow a County inspector to inspect the site or the permittee's log the County shall have the right to obtain an inspection warrant under Code of Civil Procedure sections 1822.50 et seq. and suspend the building permit. The County shall also have the right to suspend the permit if the permittee fails to maintain or have available a log required by this article, if the permittee violates any other provision of this article or if the permittee commits any other act which would be grounds for suspension of a building permit or demolition permit.

(c) If the County decides to suspend the permit under this section, the County shall issue a notice of suspension and serve the permittee under section 11.112 of this code. The suspension shall be effective 15 days from the date the County serves the notice of suspension unless the permittee appeals the notice of suspension under section 68.517, which stays the effective date of the suspension until the appeal is decided. If the County determines that any construction or demolition site is unsafe or that the permittee has knowingly failed to comply with section 68.515 the County may suspend the permit immediately and advise the permittee in the notice of suspension that the permit is suspended immediately and state the reasons for the immediate suspension. A notice of immediate suspension is also appealable under section 68.517, but an appeal does not stay the immediate suspension of the permit.

(d) It shall be unlawful for any permittee to continue to operate under a DMP in violation of subsection (c) above. A permittee who violates this section shall be guilty of a misdemeanor for each day the permittee operates in violation of subsection (c) above and upon conviction shall be fined in an amount not to exceed \$500 or by imprisonment in the County Jail or both fine and imprisonment.

(e) In addition to prosecuting a permittee who violates subsection (c) above the County may seek injunction relief in any court of competent jurisdiction and civil penalties of up to \$1000 a day for each day a permittee violates subsection (c).

(f) It shall also be unlawful for an applicant or a DMP permittee to knowingly provide false information to the County under this article. An applicant or permittee who knowingly provides false information under this article shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$500 or by imprisonment in the County Jail or both fine and imprisonment.

SEC. 68.517. APPEALS

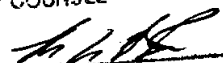
The following appeals may be made to the director: (1) a denial of an infeasibility exemption under section 68.514, (2) forfeiture of performance guarantee under section

68.515 or (3) a suspension of the DMP permit under section 68.516. No other appeal shall be allowed under this article. A notice of appeal shall be in writing and filed with or mailed to the director within 15 days from the date the County served any appealable notice. The postmark on any mailed notice of appeal shall be deemed to be the date appellant filed a notice of appeal by mail. The director shall appoint an independent hearing officer to hear the appeal under procedures established by the director. The decision of the hearing officer shall be final.

SEC. 68.518. SEPARABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article, or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Chapter are declared to be severable.

Section 3. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of the Board voting for and against it in the San Diego Commerce, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY 
DEPUTY

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 21st day of March, 2007.



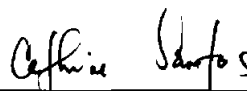
RON ROBERTS
Chairman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Slater-Price, Roberts, Horn

ATTEST my hand and the seal of the Board of Supervisors this 21st day of March, 2007.

THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors

By  _____
Catherine Santos, Deputy



No. 9840 (N.S.)

03-21-2007 (4)