

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:**

An Ordinance of the City Council of the)
City of Lafayette Amending Chapter 5-6)
of the Lafayette Municipal Code regarding) Ordinance No. 617
construction and demolition debris)
recycling ("Project"))

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. The State of California through its California Waste Management Act of 1989, Assembly Bill 939 ("AB 939"), requires that each local jurisdiction in the state divert 50 percent of discarded materials from landfills.
2. Reusing and recycling construction and demolition debris is essential to reduce waste and comply with AB 939 since construction and demolition debris make up approximately 30 percent of California's waste stream.
3. Construction and demolition debris waste reduction and recycling have proven to reduce the amount of such materials that are landfilled and to be cost-effective.
4. As a member of the Central Contra Costa Solid Waste Authority ("CCCSWA"), the City of Lafayette has participated in the CCCSWA's efforts to reduce construction and demolition debris landfilled and in 2002, the City Council adopted Ordinance No. 535 which added Chapter 5-6, Construction and Demolition Debris Recycling to the Lafayette Municipal Code.
5. Despite that CCCSWA'S member cities adopted construction and demolition debris ordinances almost ten years ago, by CCCSWA'S member cities, the California Integrated Waste Management Board (now the Department of Resources Recycling and Recovery) has voiced concern that current construction and demolition ordinances for CCCSWA's member cities were not capturing all recoverable wastes generated by construction projects in the service area.
6. The City of Lafayette is joining other cities in Contra Costa County and California in adopting construction and demolition debris ordinance revisions in an attempt to achieve higher diversion rates.
7. A Negative Declaration was prepared for Ordinance No. 535 and adopted by the City Council on October 15, 2002. The Negative Declaration found that implementation of Ordinance No. 535 will not result in any significant adverse environmental impacts. Per California Environmental Quality Act CEQA Guidelines Section 15162, no additional review is required because the Project will not result in any new impacts nor substantially increase any impacts not already addressed in the previously adopted Negative Declaration.

Section 2. Amending Chapter 5-6 of the Lafayette Municipal Code to read as follows:

**“CHAPTER 5-6
CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING**

- 5-601 Definitions.
- 5-602 Waste diversion requirement for all covered projects.
- 5-603 Threshold for covered projects.
- 5-604 Deconstruction and material salvage.
- 5-605 Required use of certified C&D recovery facility by all covered projects.
- 5-606 Submission of the waste management plan (WMP) at permit issuance by all covered projects.
- 5-607 Final review of waste management plan and determination of compliance.
- 5-608 Infeasibility exemption.
- 5-609 Appeal.
- 5-610 Administration fee.
- 5-611 Waste diversion supporting green building certification.
- 5-612 Enforcement

5-601 Definitions.

For the purposes of this chapter, 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 or approvals to undertake construction, demolition or renovation projects within the city.
- B. “Certified C&D Recovery Facility” means any facility certified by the Contra Costa County Solid Waste Authority (CCCSWA), or the city to recover at least 50 percent or more of recyclable materials from C&D debris disposal and provide a receipt or other equivalent documenting this disposal and recovery.
- C. “Construction” means the building or improvement of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.
- D. “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 or demolition operations on any pavement, residential or commercial building or other structure.
- E. “Covered project” means projects as defined in section 5-603.
- 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 lawful purpose other than disposal in a landfill.
- I. "Disposal Facility" means any facility permitted to receive solid waste, recyclable, or reusable waste materials.
- J. "Diversion requirement" means 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 5-608, in which case the diversion requirement shall be the maximum feasible diversion rate established by the WMP compliance official for the project.
- K. "Project" means any activity, which requires an application for a building, grading 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 to an existing developed property resulting in the generation of C&D debris.
- Q. "Total costs" means the total construction value of the project using standard commercial and residential valuation formulas.
- R. "Waste management plan" ("WMP") means a completed WMP form, approved by the city for the purpose of compliance with this chapter, submitted by the applicant for any covered project. The WMP shall identify C&D debris materials that will be generated for disposal and recycling and shall contain actual material weight or volume and disposal and recycling receipts.
- S. "WMP compliance official" ("official") means the designated city employee(s) authorized and responsible for implementing this chapter.

5-602 Waste diversion requirement for all covered projects.

All covered projects requiring a building or demolition permit shall divert at least 50 percent or more of C&D debris for purposes of reuse or recycling. Effective January 1, 2015, the diversion rate shall increase to 60 percent or more. Effective January 1, 2020, the diversion rate shall increase to 75 percent or more.

5-603 Threshold for covered projects.

- A. Covered projects. All non-city construction, demolition and renovation projects within the city, the total costs of which are, or are projected to be, greater than or equal to \$50,000, or which involve the construction or renovation of 1,000 square feet or more shall be considered covered projects and shall comply with this chapter. For the purposes of determining whether a project meets the foregoing thresholds, all phases of a project and all related projects taking place on single or adjoining parcels, as determined by the official, shall be deemed a single project.
- B. Public projects. All construction, demolition and renovation projects undertaken by the city whose total costs are equal to or greater than \$50,000, or which involve the construction or renovation of 1,000 square feet or more shall be considered covered projects for the purposes of this chapter. A WPM shall be submitted to the official prior to beginning any construction or demolition activities and shall be subject to all applicable provisions of this chapter.
- C. Demolition-only projects. All demolition-only projects, including any city projects, within the city which are, or are projected to be, greater than or equal to 300 square feet shall be considered covered projects and shall comply with this chapter.
- D. Building, grading and demolition permits. No building, grading or demolition permit shall be issued for a covered project, unless and until the official has approved a WPM for the project. Compliance with the provisions of this chapter shall be listed as a condition of approval on any building, grading or demolition permit issued for a covered project.

5-604 Deconstruction and Material Salvage.

In preparing the WPM, applicants for building or demolition 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 being transported for disposal to a disposal facility or landfill.

5-605 Required use of certified C&D recovery facility by all covered projects.

- A. C&D debris must be taken to a certified C&D recovery facility by all covered projects.
- B. In order to establish compliance for all covered projects, the applicant must submit all disposal documentation from certified C&D recovery facilities (to which the C&D debris is taken) and other disposal facilities (to which the non-recyclable materials are taken) to assist in determining whether the diversion requirement has been met.

- C. The city shall make available to each applicant a current list of certified C&D recovery facilities.

5-606 Submission of the waste management plan (WMP) by covered projects.

- A. WMP form. Applicants for any covered projects shall complete and submit a WMP on a form approved by the city for this purpose as part of the application submittal requirements for a building, grading or demolition permit. The completed WMP shall include all of the following:
1. A list of the C&D debris material types to be generated; and
 2. An acknowledgement of responsibility that the applicant and/or property owner understands the consequences of not meeting the 50 percent diversion requirement and that the applicant and/or property owner is responsible for the actions of their contractors or other agents with regard to the diversion requirement. Both the property owner and contractor shall acknowledge this responsibility and indicate so by their signatures on the WMP.
- B. Initial review of WMP at permit issuance. Notwithstanding any other provision of the Lafayette Municipal Code, no building, grading or demolition 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 official has made an initial review and approval of the WMP. Approval shall not be required, however, when the city determines an emergency demolition is required to protect public health or safety. A WMP shall receive initial approval only when the official determines that the following conditions have been met:
1. The WMP provides all of the information set forth in subsection 5-606A; and
 2. The WMP indicates how fifty percent or more of all C&D debris generated by the project will be diverted.

If the official determines that these two conditions have been met, the WMP shall be marked as "Approved" and a copy of the WMP returned to the applicant. If the official determines that these two conditions have not been met, the WMP shall be marked "Further Explanation Required" and returned to the applicant.

5-607 Final review of waste management plan and determination of compliance.

- A. Documentation. Within 30 days after the completion of any covered project, the applicant shall submit documentation that clearly demonstrates that the project has met the diversion requirement established by this chapter. This documentation shall include the following:
1. A copy of the previously approved WMP for the project with the addition of recyclable and/or reusable C&D and refuse waste volume or weight generated by the project;

2. Receipts, tickets or any other documentation from certified C&D recovery facilities or other disposal facilities that documents disposal for each C&D debris material type by weight or volume and clearly indicates whether each material was landfilled or recycled; and
 3. Any additional information that the applicant believes is relevant to determining its efforts to comply in good faith with this chapter.
- 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 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 to other considerations as determined by the official, 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. The official shall review the information submitted pursuant to subsection 5-607A and determine whether the applicant has complied with the diversion requirement as follows:
1. Full compliance. If the official determines that the applicant has fully complied with the diversion requirement applicable to the project, such compliance shall be indicated on the WMP.
 2. Good effort to comply. If the diversion requirement has not been achieved, the official shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with the chapter. In making this determination, the 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 the C&D debris. If the official determines that the applicant has made a good faith effort to comply with this chapter, such determination shall be indicated on the WMP.
 3. Noncompliance. If the official determines that the applicant has not fully complied with the diversion requirement of this chapter, the official may withhold final project approval until full compliance can be established. If the official determines that the applicant has fully failed to comply with the diversion requirements of this chapter, then a fine of \$1,000 or one percent (1%) of project cost, whichever is lesser, will be levied against the WMP property owner.

5-608 Infeasibility exemption.

- A. Application. If an applicant for a covered project experiences unique circumstances that the applicant believes makes it infeasible to comply with the diversion requirement, the applicant may apply for an exemption at the time that the WMP is submitted as required under section 5-606A. The applicant shall indicate on the WMP the minimum rate of diversion that is feasible for each material and the specific circumstances that makes it

infeasible to comply with the diversion requirement. Increased costs to the applicant generally will not be sufficient basis for an exemption unless such costs are extraordinary.

- B. Meeting with the official. The 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 official may request staff from the CCCSWA to attend this meeting or may require the applicant to request a separate meeting with CCCSWA staff. Based on the information supplied by the applicant and, if applicable, CCCSWA staff, the official shall determine whether it is possible for the applicant to meet the diversion requirement.
- C. Granting of exemption. If the official determines that it is infeasible for the applicant to meet the diversion requirement due to unique circumstances, the official shall determine the minimum feasible diversion rate for each material and shall indicate this rate on the WMP submitted by the applicant. The official shall return a copy of the WMP to the applicant marked "Approved for Infeasible Exemption".
- D. Denial of exemption. If the official determines that it is possible for the applicant to meet the diversion requirement, the official shall so inform the applicant in writing. The applicant shall have 30 days to resubmit a WMP form in compliance with section 5-606A. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with subsection 5-606B, the official shall return the WMP to the applicant marked "Further Explanation Required".

5-609 Appeal.

Appeal of a determination made under this chapter, except the imposition of fines under section 5-607, shall be made to the city council pursuant to Section 1-214 of the Lafayette 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 WMP.

5-610 Administration fee.

As a condition precedent to the issuance of any permit for a covered project requiring proof diversion, the applicant shall pay the city a fee as established by resolution of the city council.

5-611 Waste diversion supporting green building certification.

The city supports green building construction projects. Recognizing that waste reuse and diversion is an important component of green building rating, the WMP and supporting recycling disposal data can be used to satisfy Build it Green "GreenPoint" and Leadership in Energy and Environmental Design (LEED) Green Building Rating System requirements for construction waste diversion. Contractors and/or property owners should check with their Green Point or LEED system rater to confirm that the requirements of this chapter will satisfy waste diversion requirements for the project covered by this application. GreenPoint or LEED Green Building Rating System certification will not excuse a project from the requirement to comply with this chapter.

5-612 Enforcement.

Violation of any provision of this chapter may be enforced through remedies pursuant to the Lafayette Municipal Code, including Chapters 1-3 and 1-9 or otherwise permitted in this chapter or by applicable law.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter 5-6, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Chapter 5-6 or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter 5-6 irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Chapter 5-6 are declared to be severable.

Section 4. Effective Date. This ordinance becomes effective thirty (30) days after its adoption.

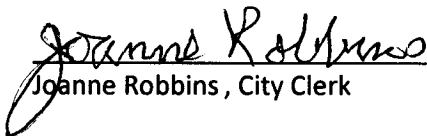
Section 5. City Council Direction. As directed by the City Council of the City of Lafayette, staff shall bring Ordinance No. 617 back to the City Council in September 2014 to determine if certified C&D recovery facilities at that time are able to achieve the 60 and 75 percent diversion rates specified in this Ordinance.

Section 6. Publication. The City Clerk shall either (a) have this ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Lafayette held on April 22, 2013, and was adopted and ordered published at a meeting of the City Council held on May 13, 2013 by the following vote:


AYES: Mayor Anderson, Councilmembers Mitchell, Reilly, and Tatzin
NOES: None
ABSTAIN: None
ABSENT: B. Andersson

ATTEST:



Joanne Robbins, City Clerk

APPROVED:



Mike Anderson, Mayor

Contra Costa Times

PO Box 4147
Walnut Creek, CA 94596
(925) 935-2525

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE, 3675 MT. DIABLO BLVD.,
#210
LAFAYETTE CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Ord # 617

In the matter of

Contra Costa Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Times, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

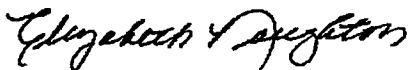
And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of October 22, 1934. Case Number 19764.

The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

4/17/2013

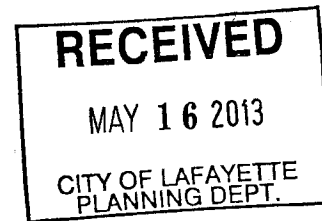
I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 16th day of May, 2013.



Signature

Legal No. 0004829297



NOTICE AND SUMMARY OF PROPOSED ORDINANCE No. 617
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE
AMENDING CHAPTER 5-6 "CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING"
OF TITLE 5 OF THE LAFAYETTE MUNICIPAL CODE

Notice is hereby given that on Monday, April 22, 2013, the City Council of the City of Lafayette will consider adopting Ordinance No. 617 amending Chapter 5-6 entitled "Construction and Demolition Debris Recycling" of Title 5 of the Lafayette Municipal Code.

The following is a summary of the amendments to Chapter 5-6: Reduce the threshold for covered projects from 5,000 square feet to 17,000 square feet; requires a waste management plan for demolition-only projects greater than or equal to 800 square feet; eliminates the performance security deposits; institutes a penalty for noncompliance; and identifies that an administrative fee will be charged to cover staff time for processing waste management plans.

Note: The above is a summary of the major highlights of the Ordinance. To obtain a full understanding of the Ordinance it should be read in its entirety. A certified copy of the full text of the Ordinance is posted in the City Clerk's office at 3675 Mount Diablo Blvd., Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of providing the copy.

Publish Date: April 17, 2013
Joanne Robbins, City Clerk

DCT # 00048297 APR 17, 2013

Contra Costa Times

PO Box 4147
Walnut Creek, CA 94596
(925) 935-2525

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE, 3675 MT. DIABLO BLVD.,
#210
LAFAYETTE CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Ord 617

In the matter of

Contra Costa Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Times, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of October 22, 1934. Case Number 19764.

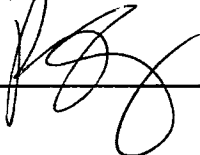
The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

5/18/2013

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 4th day of June, 2013.

Signature



Legal No. 0004859764

**NOTICE OF ADOPTION OF ORDINANCE NO. 617
AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LAFAYETTE AMENDING CHAPTER 5-6
"CONSTRUCTION AND DEMOLITION DEBRIS RE-
CYCLING" OF TITLE 5 OF THE LAFAYETTE MU-
NICIPAL CODE**

At its regular meeting on May 13, 2013 the City Council of the City of Lafayette adopted Ordinance 617 by the following recorded vote:

**Ayes: M. Anderson, Tatzin, Mitchell, and Reilly
Noes: None
Abstain: None
Absent: B. Andersson**

The following is a summary of the amendments to Chapter 5-6: Reduces the threshold for covered projects from 5,000 square feet to 1,000 square feet; requires a waste management plan for demolition-only projects greater than or equal to 300 square feet; eliminates the performance security deposits; institutes a penalty for noncompliance; identifies that an administrative fee will be charged to cover staff time for processing waste management plans; and requires the use of certified construction and demolition recovery facilities.

Note: The above is a summary of the major highlights of the Ordinance. To obtain a full understanding of the Ordinance it should be read in its entirety. A certified copy of the full text of the Ordinance is posted in the City Clerk's office at 3675 Mount Diablo Blvd., Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of providing the copy.

**Publish Date: May 18, 2013
Joanne Robbins, City Clerk
CCT# 4859764 May 18, 2013**