

DRAFT

ORDINANCE NO. 2021-17

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA,
AMENDING CHAPTER 11.22 TO TITLE 11 OF THE ENCINITAS MUNICIPAL CODE --
CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING**

WHEREAS, 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 fifty percent (50%) of discarded materials from landfills by December 31, 2000; and

WHEREAS, every city and county in California, including the City of Encinitas, may be subject to fines up to \$10,000 a day for not meeting the above mandated goal; and

WHEREAS, Construction and Demolition ("C&D") debris has significant potential for waste reduction and recycling; and

WHEREAS, C&D debris waste reduction and recycling have been proven to reduce the amount of such material which is sent to landfills, increase site and worker safety, and be cost effective; and

WHEREAS, increasing residential and commercial recycling and reusing and recycling C&D debris are essential to further the City's efforts to reduce waste and comply with AB 939, AB 341, AB 1826, and SB 1383 requirements and goals; and

WHEREAS, with some exceptions it is usually feasible to divert the minimum amount of all C&D debris from construction, demolition, and renovation projects required by Title 11; and

WHEREAS, to ensure compliance with this Chapter and to ensure that those contractors that comply with this Chapter are not placed at a competitive disadvantage, it is necessary to establish an Administrative Penalty.

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

SECTION 1. All of the above statements are true; and

SECTION 2. Chapter 11.22 of Title 11 of the Encinitas Municipal Code is hereby amended to read as follows (the strikethrough text represents deleted language and the underlined text represents new language):

CHAPTER 11.22

Construction and Demolition Debris Recycling

SECTIONS:

11.22.010 Purpose and Intent.

11.22.020 Definitions.

11.22.030 Construction and Demolition Debris Diversion Requirements.

11.22.040	Submission of Waste Management Plan.
11.22.050	Review of Waste Management Plan.
11.22.060	Compliance with Waste Management Plan.
11.22.070	Exemption.
11.22.080	Administrative Penalty.
11.22.090	Enforcement.
11.22.100	Appeal.

11.22.010 Purpose and Intent.

The purpose of this Chapter is to promote the recycling of Construction and Demolition Debris in order to protect the public health, safety, and welfare and to meet the City's obligations under AB 939, AB 341, AB 1826, SB 1383, and the California Green Building Standards Code. It is not the intent of this Chapter to circumvent the provisions of the City's Solid Waste Franchise Agreement.

11.22.020 Definitions.

For the purposes of this Chapter 11.22, the following definitions shall apply:

"Addition" means an extension or increase in floor area of an existing building or structure.

"Administrative Penalty" means any penalty or fine assessed to an Applicant pursuant to Section 11.22.080 of this Chapter.

"Alteration" or "Alter" means any Construction or Renovation to an existing structure, other than repair for the purpose of maintenance or Addition.

"Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private for profit or non-profit 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.

"Building Permit" refers to the prescribed regulations for the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, and maintenance of buildings and structures.

"City Sponsored Project" means any Project where the improvements are or will be upon completion, owned by the City.

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

"Construction and Demolition ("C&D") Debris" means used or discarded materials removed from premises during Construction or Renovation of a structure resulting from Construction, Alteration, repair, Deconstruction, or Demolition operations on any pavement, house, garage, commercial building, or other structure. This term includes, but is not limited to, asphalt, concrete, brick, dirt, rock, lumber, cardboard, metals, and any vegetative or other land clearing/landscaping materials.

“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.

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

“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.

“Divert” means to use Construction or Demolition Debris for any purpose other than disposal in a landfill or transformation facility.

“Diversion Requirement” means 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 Encinitas Municipal Code, Tier I requirements for commercial Projects, any applicable state law requirements, and the requirements outlined in Chapter 11.22.030, , unless the Applicant has been granted an Exemption pursuant to Section 11.22.070 of this Chapter, in which case the Diversion Requirement shall be the maximum feasible diversion rate established by the WMP Compliance Official for the Project.

“Final Building Approval” means acceptance by the City that all requirements and conditions of the Project have been met.

“Hazardous Waste” has the meaning established by California Public Resources Code Section 40141.

“Project” means any activity which requires an application for a Demolition or Building Permit or any similar permit from the City.

“Recycling” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Renovation” means any change or modification in an existing structure.

“Reuse” means further or repeated use of Construction or Demolition Debris.

“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.

“Solid Waste” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Total Costs” means the total Construction value of the Project as calculated by the Building Division using the City's standard commercial and residential valuation formulas.

“Waste Management Plan” (“WMP”) means a completed form prepared and submitted by an Applicant for any Project approved by the City for the purpose of compliance with this ordinance. The form is submitted when applying for a permit.

“WMP Compliance Official” means the staff person(s) designated by the City Manager authorized and responsible for implementing this Chapter.

“WMP Review Fee” means the fee for processing WMP applications as adopted by the City Council by resolution, if any.

“WMP Report” means the final calculation of Construction and Demolition Debris diversion for the Project as described in Section 11.22.060.

11.22.030 Construction and Demolition Debris Diversion Requirements.

A. Any Project (residential, non-residential, and mixed use) generating any Construction and Demolition Debris within the City, including City Sponsored Projects, 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 Encinitas Municipal Code, Tier I requirements for commercial Projects, any applicable state law requirements, and the requirements of this section. All demolition-only Projects shall meet the minimum diversion requirements set forth by the California Green Building Standards Code. For the purposes of determining whether a Project meets the foregoing threshold, all phases of a Project and all related Projects taking place on single or adjoining parcels, as determined by the WMP Compliance Official, shall be deemed a single Project. Compliance with the provisions of this Chapter shall be listed as a condition of approval on any building or Demolition permit issued for a Project. Failure to include such a condition shall not relieve the Project Applicant from complying with this Chapter. No building, site development, or Demolition permit shall be issued for a Project unless and until the WMP Compliance Official has approved a WMP for the Project. 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 set forth in Sections 11.22.080 and 11.22.090 below.

11.22.040 Submission of Waste Management Plan.

A. Waste Management Plan (WMP) Forms: Applicants for any Project subject to the requirements outlined in Section 11.22.030 shall complete and submit a Waste Management Plan (“WMP”) on a form approved by the City for this purpose before a building or Demolition permit may be issued and be required to pay a WMP Review Fee, if any. The WMP shall be submitted for review with the first plan check of an individual Project or at the first check of a residential master plan in the case of a residential Project. The completed WMP shall indicate all of the following:

1. Estimated weight of Project C&D Debris, by materials type, to be generated;
2. The minimum required percentage set forth in Section 11.22.030 of all C&D Debris generated by the Project that must be diverted;
3. Maximum weight of such materials that can feasibly be diverted via reuse or recycling;
4. Vendor(s) or facility(ies) that the Applicant proposes to use to collect or receive that material;
5. Estimated weight of C&D materials that will be landfilled; and
6. Total square footage of the Project.

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 for this purpose.

C. Deconstruction: In preparing the WMP, Projects 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.

11.22.050 Review of WMP.

A. Approval: Notwithstanding any other provision of this Chapter, no permit shall be approved for any Project unless and until the WMP Compliance Official has approved the WMP. Approval shall not be required, however, where an emergency Demolition, as determined by the WMP Compliance Official, is required to protect public health or safety. 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. WMP provides all of the information set forth in Section 11.22.040 of this Chapter; and
2. WMP must indicate that the minimum required percentage of all C&D debris generated by the Project, as set forth in Section 11.22.030, will be diverted.

If the WMP Compliance Official determines that all of the above conditions have been met, he or she shall mark the WMP "Approved" and notify the Building Division that the WMP has been approved.

B. Non-approval: If the WMP Compliance Official determines that the WMP is incomplete or fails to indicate that the minimum required percentage set forth in Section 11.22.030 of all C&D Debris generated by the Project will be reused or recycled, he or she shall either:

1. Contact the Applicant to discuss the WMP, make recommendations for additional diversion, and obtain and note verbal confirmation from the Applicant of changes to the WMP that would meet the requirements of this Chapter, or;
2. Return the WMP to the Applicant marked "Denied", including a statement of reasons, and so notify the Building Division, which shall withhold permit issuance until the WMP is resubmitted and approved, or;
3. Return the WMP to the Applicant marked "Further Explanation Required."

Notwithstanding any other provision of this code the decisions of the WMP Compliance Official with regard to this section shall be final.

11.22.060 Compliance with WMP.

A. Documentation: Prior to Final Building Approval, the Applicant shall submit to the WMP Compliance Official documentation that it has met the Diversion Requirement for the Project. If the Applicant does not submit the required documentation, he or she may be subject to an Administrative Penalty or enforcement action as described in Sections 11.22.080 and 11.22.090 of this Chapter. The Diversion Requirement shall be the minimum percentage set forth in Section 11.22.030 of the total C&D Debris generated by the Project via Reuse or Recycling.

Provided, however, that an Applicant granted an Exemption pursuant to Section 11.22.070 of this Chapter shall be required to comply with the maximum feasible diversion rate established by the WMP Compliance Official for that Project. The documentation for compliance shall include all of the following:

1. Copies of all receipts from the vendor(s) or facility(ies) which collected or received each material showing the actual weight of that material.
2. A copy of the previously approved WMP for the Project adding the actual weight of each material diverted and landfilled.
3. Any additional information 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 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 approved by the City for this purpose.

C. Determination of Compliance and Assessment of an Administrative Penalty: The WMP Compliance Official shall review the information submitted under Sections 11.22.040 and 11.22.050 of this Chapter and determine whether the Applicant has complied with the Diversion Requirement, as follows:

1. Full Compliance: If the WMP Compliance Official determines that the Applicant has fully complied with the Diversion Requirement applicable to the Project, he or she shall approve the final WMP Report.
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 Chapter 11.22. 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 11.22, he or she may approve the final WMP Report or assess an Administrative Penalty as described under Section 11.22.080 of this Chapter. Any penalty assessed must be paid to the City prior to Final Building Approval.
3. Noncompliance: If the WMP Compliance Official determines that the Applicant has not made a good faith effort to comply with this Chapter 11.22, or if the Applicant fails to submit the documentation required by 11.22.060(A) of this Chapter, then the Applicant may be assessed an Administrative Penalty as described under Section 11.22.080 of this Chapter and/or be prosecuted for a criminal violation under Section 11.22.090 of this Chapter or use any other legal remedy which may be available. Any penalty assessed must be paid to the City prior to Final Building Approval.

4. The WMP Compliance Official upon determining non-compliance with this Chapter shall notify the Applicant of the WMP Report findings. The notice shall be in writing and shall identify the specific noncompliance with the WMP by the Applicant and inform the Applicant that it has a right to a hearing to appeal the decision of the WMP Compliance Official. The Applicant's request for a hearing must be made in writing and received by the City Manager no later than the City's close of business on the seventh calendar day from the mailing date (as determined by postmark) of the non-compliance notice. Appeal of a determination made under this chapter by the WMP Compliance Official shall be filed with the City Manager and heard by an impartial hearing officer. A hearing shall be held no earlier than ten calendar days and no later than 30 calendar days following the receipt by the City Manager of the written request for hearing. The Applicant shall be permitted to submit evidence. The rules of evidence shall not apply. The hearing officer may consider any relevant evidence. The Applicant shall not be entitled to cross-examine any witnesses. The Applicant shall be notified in writing of the decision of the hearing officer. Notwithstanding any other provision of this Municipal Code (including section 11.22.020) the decision of the hearing officer shall be final. If the hearing officer determines that the Applicant has failed to comply with the WMP as required by 11.22.060(A) of this Chapter, then the Applicant may be assessed an Administrative Penalty as described under Section 11.22.080 of this Chapter and/or be prosecuted for a criminal violation under Section 11.22.090 of this Chapter or use any other legal remedy which may be available.

11.22.070 Exemption.

A. Application: If an Applicant for a Project subject to the requirements of Chapter 11.22.030 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 11.22.040 of this Chapter. The Applicant shall indicate on the WMP the maximum rate 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.

C. Granting of Exemption: the WMP Compliance Official shall issue an infeasibility exemption if he or she can make one or more of the following findings:

1. That circumstances exist which are unique to the Project to the effect that compliance with the provisions of this Chapter would create an unusual burden on the Project which is different than that of similarly situated properties; or
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; or
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 the WMP Compliance Official is able to make one or more of the above findings for a Project he or she may excuse the Project from compliance with this Chapter or determine the maximum feasible reduced 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 Exemption" and shall notify the Building Division that the WMP has been approved.

D. Denial of Exemption: If the WMP Compliance Official is unable to make any of the findings required by Section 11.22.070(C) (above), 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 11.22.040 of this Chapter. If the Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with Section 11.22.040 of this Chapter, the WMP Compliance Official shall deny the WMP in accordance with Section 11.22.050(B) of this Chapter. Notwithstanding any other provision of this Code the determination of the WMP Compliance Officer shall be final.

11.22.080 Administrative Penalty.

Any Applicant who does not comply with any requirement of this Chapter shall be assessed an Administrative Penalty of one-thousand dollars (\$1,000) or one percent of the total cost of the Project, whichever is greater. The WMP Compliance Official upon determining non-compliance with this Chapter shall notify the Applicant of the penalty assessed against it. The notice shall be in writing and shall identify the amount of the penalty assessed, the specific noncompliance for which the penalty is being assessed and inform the Applicant that it has a right to a hearing to appeal the validity or amount of the assessed penalty pursuant to Section 11.22.060(C)(4).

11.22.090 Enforcement.

Any person responsible for violation of any provision of this Chapter shall be guilty of a misdemeanor. Nothing in this Chapter shall preclude the City from initiating a civil action to enforce the provisions of this Chapter. If the City shall prevail in any such civil action it shall be entitled to attorney fees.

11.22.100 Appeal.

Appeal of a determination made under this chapter by the WMP Compliance Official shall be filed with the City Manager and heard by an impartial hearing officer, as described in Section 11.22.060(C)(4). The appeal shall be in writing and filed with the City Manager within ten days of receipt of the WMP Compliance Official's decision by the appellant. Appeals shall be limited to whether the Applicant made a good faith effort to comply with the WMP. The Applicant shall be notified in writing of the decision of the hearing officer. Notwithstanding any other provision of this Municipal Code (including section 11.22.020) the decision of the hearing officer shall be final. Any penalty assessed must be paid to the City prior to Final Building Approval. Nothing in this Chapter precludes the use of any other type of enforcement if administrative fines are imposed under this section.

SECTION 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the

environment. Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that anyone or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

SECTION 5. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California held on the _____ day of _____ 2021, and thereafter,

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, on the ____ day of _____ 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Catherine S. Blakespear, Mayor

ATTEST:

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney