

# D-R-A-F-T

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE (Jurisdiction of XXXX, CALIFORNIA, AMENDING THE (Jurisdiction MUNICIPAL CODE BY ADDING A NEW CHAPTER X, CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT TO ARTICLE X OF THE JURISDICTION MUNICIPAL CODE**

WHEREAS, The California Integrated Waste Management Act of 1989, commonly referred to as Assembly Bill 939 (AB 939), requires each local jurisdiction in the state to meet a 50% diversion rate. To meet the 50 percent goal, jurisdictions must dispose of not more than their 50 percent per capita disposal target, which is the reported disposal divided by jurisdiction population;

WHEREAS, Each Jurisdiction in California could face fines up to \$10,000 a day for not meeting the above goal;

WHEREAS, In 2004, approximately 22% of the materials landfilled statewide was from Construction and Demolition (C&D) activities and these materials would have significant potential for waste reduction and recycling;

WHEREAS, The reduction, reuse and recycling of C&D Debris is essential to further the Jurisdiction's efforts to reduce waste and comply with AB 939 goals;

WHEREAS, reduction, reuse and recycling of C&D Debris reduces the amount of C&D Debris transported for disposal in landfills and transformation facilities, increases site and worker safety, and is cost effective;

WHEREAS, The Jurisdiction finds that, except in unusual circumstances, it is feasible to divert 100% of all Portland cement concrete and asphalt concrete and an average of at least fifty (50) percent of all remaining C&D debris from construction, demolition, and renovation projects.

WHEREAS, diverting C&D debris from landfilling can reduce greenhouse gas emissions and reduce energy consumption.

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 impose a Diversion Security Deposit requirement.

**NOW, THEREFORE, THE COUNCIL/Board of Supervisors OF THE JURISDICTION OF XXX HEREBY ORDAINS THAT:**

**SECTION 1.** The **City Council/Board of Supervisors** hereby finds, determines and declares as follows:

**Article X of the XX Code** is amended by adding a new Chapter **X** “CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT,” to read in its entirety as follows:

**“CHAPTER X**

**CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT**

**PART 1**

**DEFINITIONS**

**Sections:**

- X00 DEFINITIONS
- X01 APPLICANT
- X02 BUILDING DEPARTMENT
- X03 BUILDING OFFICIAL
- X04 CONSTRUCTION
- X05 CONSTRUCTION AND DEMOLITION Debris or C&D Debris
- X06 CONSTRUCTION AND DEMOLITION DIVERSION SECURITY DEPOSIT OR DIVERSION SECURITY DEPOSIT
- X07 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN
- X08 COVERED PROJECT
- X09 CONVERSION RATE
- X10 DECONSTRUCTION
- X11 DEMOLITION
- X12 DISPOSAL
- X13 DIVERT OR DIVERSION
- X14 DIVERSION REQUIREMENT
- X15 FEASIBLE
- X16 INERT DEBRIS
- X17 NON-COVERED PROJECT
- X18 PROJECT
- X19 PUBLIC WORKS DIRECTOR
- X20 RECYCLING
- X21 RENOVATION
- X22 REUSE
- X23 SALVAGE

X00. DEFINITIONS For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this Chapter, unless clearly inapplicable. Words and phrases not ascribed a meaning by this Chapter shall have the meaning ascribed by **Article X, Chapter X, Part X** of this Code, if defined therein, and if not,

by Division 30, Part 1, Chapter 2 of the Public Resources Code, §§ 40000, *et seq.*, and the regulations of the California Department of Resources Recycling and Recovery, if defined therein, and if not, to the definitions found in the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.* and the regulations implementing RCRA, as they may be amended from time to time.

X01 APPLICANT means any person, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever required to apply to the **Building Department** for an applicable permit to undertake any Construction, Demolition, Renovation Project within the **Jurisdiction**. An Applicant must comply with this Chapter.

X02 BUILDING DEPARTMENT shall have the meaning ascribed by **§ XX** of this Code.

X03 BUILDING OFFICIAL shall have the meaning ascribed by **§ XXX** of this Code.

X04 CONSTRUCTION means the building of any facility or structure or any portion thereof including any tenant improvements to a previously unoccupied existing facility or structure. "Construction" does not include a project limited to interior plumbing work, electrical work or mechanical work.

X05 CONSTRUCTION AND DEMOLITION MATERIALS include the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures, as defined in Title 14, CFR, Chapter 3, Article 4, Section 17225.15. This term includes, but is not limited to, asphalt, concrete, Portland cement, concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe, and steel.

X06 CONSTRUCTION AND DEMOLITION DIVERSION SECURITY DEPOSIT or DIVERSION SECURITY DEPOSIT means any performance bond, surety bond, money order, letter of credit, cash, certified check or certificate of deposit in a form acceptable to the **Jurisdiction**, submitted to the **Jurisdiction** pursuant to Part 4 of this Chapter.

X07 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN or C&DMMP, means a completed C&DMMP form, approved by the **Jurisdiction** for the purpose of compliance with this Chapter, submitted by the Applicant for any Covered Project.

X08 COVERED PROJECT means a project for which a building, demolition, parking area construction or other similar permit is required by this Code. See Part 2, below.

X09 CONVERSION RATE means the rate set forth in the standardized Conversion Rate Table approved by the **Jurisdiction** pursuant to this Chapter for use in estimating the volume or weight of materials identified in a Construction and Demolition Materials Management Plan.

X10 DECONSTRUCTION means the selective dismantling or removal of useable materials from structures, in a manner which maximizes the recovery of building

materials for reuse and recycling and minimizes the amount of waste transported for disposal in landfills and transformation facilities.

X11 DEMOLITION means the destruction, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

X12 DISPOSAL means the final disposition of construction and demolition or inert material, to a Class III landfill.

X13 DIVERT or DIVERSION means activities that reduce or eliminate the amount of C&D Debris from disposal in a landfill or transformation facility. See Public Resources Code § 40124.

X14 DIVERSION REQUIREMENT means the following:

- a) a minimum of 75 % of the total inert debris generated from any new construction or demolition project, and:
- b) a minimum of at least fifty percent (50%) of the non-inert portion of the Construction and Demolition Debris generated by a Demolition or Renovation Project, diverted by activities including, in order of priority: deconstruction, salvage, reuse, recycling and other waste minimization techniques; and
- c) a minimum of 50% of the non-inert portion of the Construction and Demolition Debris generated by a New Construction Project, diverted by activities including, in order of priority, incorporation of green building design elements, environmentally preferable purchasing practices, on-site reuse and source separation, recycling, and other waste minimization measures.

All Covered projects must meet the diversion requirement unless the Applicant has been granted an exemption pursuant to Part 7 of this Chapter. If the Applicant has been granted an exemption, the Diversion Requirement shall be the maximum feasible diversion rate established by the Director for the Project.

X15 FEASIBLE shall have the meaning ascribed by Public Resources Code § 21061.1, as it, from time to time, may be amended.

X16 INERT DEBRIS shall have the meaning as defined in Title 14 of the California Code of Regulations (CCR) Chapter 9, Article 3, Section 18720: Inert solids or inert waste. "Inert solids" or "inert waste" means a non-liquid solid waste including, but not limited to, soil and concrete, that does not contain hazardous waste or soluble pollutants at concentrations in excess of water-quality objectives established by a regional water board pursuant to Division 7 (commencing with section 13000) of the California Water Code and does not contain significant quantities of decomposable solid waste.

X17 NON-COVERED PROJECT shall have the meaning set forth in Part 2 of this Chapter.

X18 PROJECT means any activity for which a permit for a building, demolition, construction or other permit is required. See also “Covered Project,” above.

X19 PUBLIC WORKS DIRECTOR or Director means the staff person holding that title or otherwise authorized and responsible for implementing this Chapter.

X20 RECYCLING shall have the meaning ascribed by Public Resources Code § 40180, as it, from time to time, may be amended.

X21 RENOVATION means any change, addition, alteration, tenant improvement, or modification in an existing structure that requires a building permit or demolition permit but does not include a project limited to interior plumbing work, electrical work or mechanical work.

X22 REUSE means the use, in the same or similar form as it was produced, of a material which might otherwise be discarded or disposed.

X23 SALVAGE means the controlled removal of Construction or Demolition Materials from a permitted Construction, Renovation, or Demolition Project for the purpose of recycling, reuse, or storage for later recycling or reuse.

## PART 2

### COVERED PROJECTS

#### Sections:

- X23 COVERED PROJECTS
- X24 NON-COVERED PROJECTS
- X25 JURISDICTION-SPONSORED PROJECTS
- X26 COMPLIANCE AS A CONDITION OF APPROVAL

X23 COVERED PROJECTS. Each applicant for a Covered Project shall submit a Construction and Demolition Materials Management Plan (“C&DMMP”) and meet the diversion requirements of this Section unless the Applicant is granted an exemption pursuant to this Chapter, in which case the diversion requirement shall be the maximum diversion rate Feasible as established in writing by the Director of Public Works in his or her sole discretion. A Covered Project shall mean any of the following projects:

1. All new residential construction projects of **one unit or more**;
2. All new non-residential development projects of at least one structure with a project area of **25,000** square feet or greater;
3. All renovation projects involving **5,000 square feet or greater** of project area.
4. All demolition projects.

X24 NON-COVERED PROJECTS. Applicants for non-covered projects are encouraged to divert construction and demolition debris to an extent and in a manner consistent with the diversion requirements of this Chapter. Non-Covered Projects are required to comply with **Jurisdiction** requirements as applicable, for the use of franchised, permitted or other contracted haulers.

X25 JURISDICTION-SPONSORED PROJECTS. All **Jurisdiction**-sponsored Construction, Demolition, and Renovation Projects, except as provided below, and regardless of cost or size, shall be considered "COVERED PROJECTS" for the purposes of this Chapter and shall be subject to all applicable provisions of this Chapter.

Prior to the start of any **Jurisdiction**-sponsored Construction or Demolition activities, the Public Works Director shall prepare a Construction and Demolition Materials Management Plan. The CDMMP will include, as Feasible, specifications for the deconstruction, salvage and reuse of Construction and Demolition Materials generated by **Jurisdiction** Covered Projects. As part of the CDMMP, the **Jurisdiction** may choose to make available potentially salvageable materials to interested parties.

The **Jurisdiction** is not required to submit a Diversion Security Deposit for **Jurisdiction**-sponsored Covered Projects. **Jurisdiction**-Sponsored Projects limited to interior plumbing work, electrical work or mechanical work are not Covered Projects. **Jurisdiction**-sponsored Demolition or Construction required to protect public health or safety in an

emergency, as defined in Public Resources Code § 21060.3, as it, from time to time, may be amended, is not a Covered Project.

X26 COMPLIANCE AS A CONDITION OF APPROVAL. Compliance with the provisions of this Chapter shall be a condition of approval on any building or demolition permit issued for a Covered Project.

## PART 3

### CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN

#### Sections:

- X30 CONTENT OF CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN
- X31 DECONSTRUCTION AND SALVAGE
- X32 USE OF MIXED MATERIALS FACILITIES
- X33 CALCULATING TYPES AND QUANTITIES OF MATERIALS

X30 CONTENT OF CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN. Each Applicant for a permit for any Covered Project shall complete and submit to the Building Official a Construction and Demolition Materials Management Plan ("C&DMMP"), on a C&DMMP form approved by the **Jurisdiction** for this purpose with any application for a building and/or demolition permit for a Covered Project. If a Covered Project involves separate Demolition and Construction phases, the C&DMMP for the Demolition phase must be submitted and approved by the Director prior to issuance of a building permit for the Construction phase of a Covered Project.

The completed C&DMMP shall indicate all of the following:

- a) project name, location, and applicant contact information
- b) proposed start date and duration of the project;
- c) description of the project;
- d) description of green building standards or other waste minimization components incorporated into the project.
- e) the estimated total volume or weight of C&D materials to be generated, by material type and activity type (construction, deconstruction, renovation, demolition).
- f) the maximum volume or weight of inert C&D Materials that will be diverted, and the methods used to Divert each material type;
- g) the types and quantities (by volume, weight or other unit) of non-inert C&D Materials that will be diverted, and the methods used to Divert each material type;
- h) the vendor or facility that the Applicant proposes to use to collect and divert each material types,
- i) the estimated volume or weight of residual C&D Materials that would be transported for disposal in a landfill or transformation facility.

X31 DECONSTRUCTION AND SALVAGE. In preparing the C&DMMP, Applicants for construction and/or demolition permits involving the removal of all or part of an existing structure shall utilize Deconstruction, to the maximum extent Feasible, to meet the Diversion Requirements. Applicants for Covered Projects shall make Salvageable Materials from any Covered Project available for reuse prior to demolition. It shall be the responsibility of the owner, the general contractor and all subcontractors to notify deconstruction/salvage companies and to recover the maximum amount of salvageable designated recyclable and reusable materials prior to demolition. Recovered and salvaged designated recyclable and reusable materials from the deconstruction phase shall be counted in meeting the diversion requirements of this chapter. Recovered or salvaged materials may be given or sold on or from the premises at which they were recovered or salvaged, or may be removed to reuse warehouse facilities for storage or sale. Title to reusable or recyclable materials forwarded to the operator of a recycling facility, landfill, or other disposal facility will transfer to the service provider upon departure of the materials from the site.

X32. USE OF MIXED MATERIALS RECYLING FACILITY. The use of a mixed materials recycling facility to meet the Diversion Requirement is allowed, subject to the satisfactory approval by the **Jurisdiction** of the documentation and verification of the types and quantities of materials that the facility receives, processes, and transports for reuse and recycling.

X33 CALCULATING VOLUME AND WEIGHT OF C&D MATERIALS. In estimating the volume or weight of materials identified in the C&DMMP, the Applicant shall use the standardized Conversion Rates approved by the **Jurisdiction** for this purpose.

## PART 4

### CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN DIVERSION SECURITY DEPOSITS

#### Sections:

#### X40 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN DIVERSION SECURITY DEPOSITS

X40 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN DIVERSION SECURITY DEPOSITS. Each Applicant for a permit for a Covered Project shall submit a Diversion Security Deposit with the Construction and Demolition Materials Management Plan. The amount of the Diversion Security Deposit shall be calculated based on the estimated amount of construction and demolition materials to be generated by the project multiplied by an amount equal to \$50 per ton. At no time will the diversion security deposit exceed \$25,000. The Public Works Director may waive the Diversion Security Deposit if the total security required pursuant to this Section would be \$500 or less.

#### Or alternate text

X40 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN DIVERSION SECURITY DEPOSITS. As a condition precedent to the issuance of any building or demolition permit or any similar permit for a Covered Project, the Applicant shall post a deposit (in the form of cash, letter of credit, or money order) with the jurisdiction type in the amount of \$1.00 per square foot of building area for each structure related to a Covered Project that will be constructed, demolished, or renovated. In no case shall the required deposit exceed \$50,000 for any single Covered Project. The Public Works Director may waive the Diversion Security Deposit if the total security required pursuant to this Section would be \$1,500 or less.

The City may at anytime, by formal resolution of the legislative body, modify the basis for calculation and amount of the required deposit.

## PART 5

### CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN REVIEW

#### Sections:

X50 APPROVAL

X51 NONAPPROVAL

5X50 APPROVAL. Notwithstanding any other provision of this Code, no building or demolition permit shall be issued for any Covered Project unless the Public Works Director has approved the C&DMMP. The Public Works Director shall approve a C&DMMP only if the Director first determines that all of the following conditions have been met: (1) the C&DMMP provides all of the information set forth in Part 3 of this Chapter; (2) the C&DMMP indicates that at least seventy five percent (75%) of all inert C&D Materials and 50% of all non-inert C&D Materials generated by the Project will be diverted; and (3) the Applicant has submitted an appropriate Diversion Security Deposit in compliance with Part 4 of this Chapter.

If the Public Works Director determines that these three conditions have been met, the Director shall mark the C&DMMP "Approved", return a copy of the C&DMMP to the Applicant, and notify the Building Department and the Building Official that the C&DMMP has been approved.

Approval shall not be required if Construction or Demolition is required to protect public health or safety in an emergency, as defined in Public Resources Code § 21060.3.

X51 NONAPPROVAL. If the Public Works Director determines that the C&DMMP is incomplete or fails to indicate the diversion requirements for the Project will be met, the Director shall either: (1) Return the C&DMMP to the Applicant marked "Denied", including a statement of reasons, and so notify the Building Department, which shall then immediately stop processing the building or demolition permit application, or (2) Return the C&DMMP to the Applicant marked "Further Explanation Required," including a statement of reasons, and so notify the Building Department, which shall then immediately stop processing the building or demolition permit application. If, during the course of the Project, the Applicant determines that the estimated tonnage of C&D Material to be generated and or recovered from the Project is substantially different from the C&DMMP, the Applicant shall submit an addendum to the original C&DMMP.

## PART 6

### REFUND AND RETURN OF DIVERSION SECURITY DEPOSITS

#### Sections:

- X60 APPLICATION FOR REFUND
- X61 DOCUMENTATION OF CONSTRUCTION AND DEMOLITION DEBRIS DIVERSION
- X62 DETERMINATION OF COMPLIANCE AND RELEASE OF DIVERSION SECURITY DEPOSIT

X60 APPLICATION FOR REFUND. Within 30 days after the completion of any Covered Project, the Applicant shall submit to the Public Works Director documentation that the Applicant has met the Diversion Requirement for the Project and apply for a refund of the Diversion Security Deposit. The Diversion Requirement shall be that the Applicant has diverted at least fifty percent (75%) of the inert C&D Materials generated by the Project and 50% of the non-inert C&D materials, via Reuse, Salvage, or Recycling, unless the Applicant has been granted an exemption pursuant to Part 7 of this Chapter, in which case the Diversion Requirement shall be the maximum Feasible diversion rate established by the Public Works Director for the Project. This documentation shall consist of:

A. A completed compliance report and form showing actual waste tonnage data, supported by original or certified photocopies of receipts and weight tags or other records of measurement from recycling companies, deconstruction contractors, and/or landfill and disposal companies, and any other source identified in the approved C&DMMP. Receipts and weight tags will be used to verify whether waste generated from the Covered project has been or will be recycled, reused, salvaged or disposed. The Applicant shall make reasonable efforts to ensure that all designated recyclable and reuse waste salvaged or disposed are measured and recorded using the most accurate method of measurement available.

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

If a Covered Project involves both a demolition and a construction phase, the diversion documentation for the demolition phase must be submitted and approved by the Director prior to issuance of a building permit for the construction phase of a Covered Project.

Alternatively, the applicant may submit a letter stating that no non-hazardous solid waste or recyclable materials were generated from the Covered Project, in which case this statement shall be subject to verification by the Director of Public Works or designee. Any diversion security deposit posted pursuant to Section X40. of this Chapter shall be forfeited if the applicant does not meet the timely reporting and other requirements of this Chapter.

X61 DOCUMENTATION OF CONSTRUCTION AND DEMOLITION MATERIAL DIVERSION. Applicants shall make reasonable efforts to ensure that all C&D Materials diverted, or delivered to disposal facilities for disposal, are measured and recorded using the most accurate method of measurement reasonably available. To the extent practical, all C&D Materials shall be weighed on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D Materials 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 **Jurisdiction** for this purpose. Documentation of the foregoing shall consist of photocopies of receipts, weight tickets, gate tickets, and other records from recycling facilities, Deconstruction contractors, solid waste enterprises and disposal facilities.

X62 DETERMINATION OF COMPLIANCE AND RELEASE OF DIVERSION SECURITY DEPOSIT. The Public Works Director shall review the information submitted under § X60 and determine whether the Applicant has complied with the Construction and Demolition Materials Management Plan and Diversion Requirement, as follows:

A. Full Compliance. If the Director determines that the Applicant has fully complied with the Construction and Demolition Materials Management Plan and Diversion Requirement applicable to the Project, the Director shall cause the full Diversion Security Deposit to be released to the Applicant.

B. Good Faith Effort to Comply. If the Director determines that the Construction and Demolition Materials Management Plan has not been complied with, the Director shall determine whether the Applicant made a good faith effort to comply with this Chapter. In making this determination, the Director shall consider the availability of markets for the C&D Materials not diverted, the size of the Project, and the documented efforts of the Applicant to divert C&D Materials. If the Director determines that the Applicant has made a good faith effort to comply with this Chapter, the Director shall approve the release of the Diversion Security Deposit, or a portion thereof, to the Applicant.

C. Partial Refund. If the Director determines the applicant has not made a Good Faith Effort to comply with this Chapter, and the Diversion Requirements have not been met, the Director may authorize the refund of a portion of the Diversion Security Deposit equivalent to the extent to which the project has met the Diversion Requirement (e.g. if only half of the diversion requirement has been reached, only half of the diversion security deposit will be returned). The balance of the diversion security deposit will be forfeited.

D. Noncompliance. If the Director determines that the Applicant has not made a good faith effort to comply with this Chapter, or if the Applicant fails to submit the documentation required by § X20, above, within the required time period, then the Diversion Security Deposit shall be retained by the **Jurisdiction**.

E. The Director shall not authorize the refund of any diversion deposit, or any portion thereof, unless the original Applicant files a written request for refund no later than twelve (12) months after the building permit is no longer active for any reason (including because the project has been completed, the permit has been withdrawn, or the permit has been revoked), and the Applicant provides documentation satisfactory to the Director in support of the request.

F. Withdrawal of Building or Demolition Permit Application. The Director may authorize the refund of any Diversion Security Deposit if the building or demolition permit application is withdrawn or cancelled before any work has begun.

G. All Diversion Security Deposits retained by the **Jurisdiction** shall be used only for:

1. Payment of Diversion Security Deposit Refunds;
2. Costs of administration of the program established by this Chapter;  
and
3. Cost of programs to achieve diversion of Construction and Demolition Materials.

## PART 7

### CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN EXEMPTIONS

#### Sections:

- X70 APPLICATION
- X71 MEETING WITH DIRECTOR
- X72 GRANTING OF EXEMPTION
- X73 DENIAL OF EXEMPTION

X70 APPLICATION. If an Applicant for a Covered Project experiences or anticipates unique circumstances that the Applicant believes make it not Feasible to comply with the Diversion Requirement, the Applicant may apply for an exemption at the time that the Applicant submits the C&DMMP required under Part 3 of this Chapter. The Applicant shall indicate on the C&DMMP the maximum rate of diversion the Applicant believes is Feasible for each material and the specific circumstances that the Applicant believes make it not Feasible to comply with the Diversion Requirement.

X71 MEETING WITH DIRECTOR. The Director shall review the information supplied by the Applicant and may meet with the Applicant to discuss possible ways of meeting the Diversion Requirement. Based on the information supplied by the Applicant, the Director shall determine whether it is possible for the Applicant to meet the Diversion Requirement.

X72 GRANTING OF EXEMPTION. If the Director determines that it is not Feasible for the Applicant to meet the Diversion Requirement, the Director shall determine the maximum Feasible diversion rate for each material and shall designate this rate on the C&DMMP submitted by the Applicant. The Director shall return a copy of the C&DMMP to the Applicant marked "Approved for Partial Exemption" and shall notify the Building Department that the C&DMMP has been approved.

X73 DENIAL OF EXEMPTION. If the Director determines that it is possible for the Applicant to meet the Diversion Requirement, the Director shall so inform and give reason(s) to the Applicant in writing. The Applicant shall have 30 days after receipt of such notification to resubmit a C&DMMP form in full compliance with this Chapter. If the Applicant fails to resubmit the C&DMMP, or if the resubmitted C&DMMP does not comply with this Chapter, the Director shall deny the C&DMMP, and the Building Official shall not issue a building or demolition permit for that Project.

## PART 8

### APPEALS

#### Sections:

X80 APPEAL

X81 DECISION BY JURISDICTION MANAGING OFFICIAL

X80 APPEAL Each Applicant shall have the right to appeal any decision made by the Director to the Jurisdiction Managing Official or the Jurisdiction Managing Official's designee. The Applicant must file a Notice of Appeal from the ruling of the Director with the Jurisdiction Clerk, with copy to the Director, within ten (10) calendar days of receipt of notice of the Director's decision. The Notice of appeal shall include all evidence and legal arguments that the Applicant wishes the Jurisdiction, and any reviewing court to consider.

X81 DECISION BY JURISDICTION MANAGING OFFICIAL. The decision made by the Jurisdiction Managing Official, or the Jurisdiction Managing Official's designee, shall be in writing, and stating the legal and factual bases for the decision. The decision shall be final and conclusive.

**PART 9**  
**ENFORCEMENT**

**Sections:**

- X90 CIVIL ACTION
- X91 INFRACTION
- X92 ENFORCEMENT

X90 CIVIL ACTION. Violation of any provision of this Chapter may be enforced by any means available to the **Jurisdiction**, including, but not limited to, an action for injunctive relief. In any civil enforcement action, administrative or judicial, the **Jurisdiction** shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this Chapter.

X91 INFRACTION. Violation of any provision of this Chapter shall constitute an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year, and a fine not to exceed \$500 for each additional violation within one year. An Applicant shall be guilty of a separate offense for each day during any portion of which any violation of this Chapter is committed, continued, or permitted by the Applicant. Where the violation is the failure to achieve the Diversion Requirement applicable to the Project and the C & D Materials from the Project have already been transported for disposal in a landfill or transformation facility, the violation shall be deemed to have ceased after a period of ten days. The **Jurisdiction** shall recover costs and attorneys' fees incurred in connection with enforcement of this Chapter.

X92 ENFORCEMENT. Enforcement may be undertaken by the **Jurisdiction** through its Director of Public Works and the **Jurisdiction** Attorney.”

**SECTION 2. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The **Jurisdiction** Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 3.** The **Jurisdiction** Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, JURISDICTION CLERK

I HEREBY CERTIFY that the above and foregoing Ordinance was duly passed and adopted by the Jurisdiction Governing Body at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
\_\_\_\_\_, JURISDICTION CLERK