

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: July 15, 2024
Reviewed by: NA

SUBJECT: Amendments to the Albany Municipal Code Chapter 12 Section 12-11
“Construction and Demolition Debris Recycling”

REPORT BY: Jeff Bond, Community Development Director

SUMMARY

The action before the City. Council is to consider an ordinance to incorporate into the Municipal Code a requirement that all construction and demolition projects must comply with recently updated state laws including Senate Bill 1383 and CalGreen building codes, including a requirement for a diversion rate of 65%.

STAFF RECOMMENDATION

That the Council adopt Ordinance No. 2024-03, amending the Albany Municipal Code regarding construction and demolition debris recycling – Second Reading, Pass-to-Print.

BACKGROUND

At the July 1, 2024 City Council meeting, the City Council voted 4-0 to approve the Ordinance for first reading.

DISCUSSION

The Ordinance before Council is for Second Reading, Pass-to-Print. If approved, a summary of the Ordinance will be published, and will be posted at each of the City’s posting locations (City Hall, Community Center, Senior Center, and the City’s website). The Ordinance will go into effect 30 days following adoption.

Attachments

1. Ordinance No. 2024-03

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ORDINANCE NO. 2024-03

**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING
ALBANY MUNICIPAL CODE CHAPTER 12, SECTION 12-11
“CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING”
TO CLARIFY THE CURRENT DIVERSION REQUIREMENTS MANDATED
BY STATE LAWS, INCLUDING SENATE BILL 1383 AND CALGREEN**

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 percent diversion rate; and

WHEREAS, the diversion and recycling of recyclable materials will assist the City of Albany to achieve these state-mandated goals and help postpone the need for new landfill capacity; and

WHEREAS, reduction, reuse and recycling of Construction and Demolition Debris (C&D Debris) is essential to further the City’s efforts to reduce waste and comply with AB 939 goals; and

WHEREAS, reduction, reuse and recycling of C&D Debris is essential to further the City’s efforts to reduce waste and comply with the California Green Building Standards Code (CALGreen) (Cal. Code Regs. Title 24) as revised from time to time; and

WHEREAS, reduction, reuse and recycling of C&D Debris reduces the amount of C&D Debris Transported for Disposal and is cost effective; and

WHEREAS, reduction, reuse, and recycling of C&D Debris reduces the greenhouse gas emissions associated with landfilling, and decreases reliance on imported lumber; and

WHEREAS, reduction, reuse and recycling of old growth redwood lumber preserves a natural resource that currently exists only in protected forests that are less than 5% of original redwood forests; and

1 **WHEREAS**, the City finds that, except in unusual circumstances, it is feasible to recover
2 via reuse, recycling, or composting all recoverable nonhazardous C&D Debris from all Projects;
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4 and

5 **WHEREAS**, the California Legislature adopted Senate Bill (SB) 1383, the Short-Lived
6 Climate Pollutant Reduction Act of 2016 which added Sections 39730.5, 39730.6, 39730.7, and
7 39730.8 to the State of California Health and Safety Code and added Chapter 13. 1 (commencing
8 with Section 42652) to Part 3 of Division 30 of the State of California Public Resources Code,
9 establishing methane emissions reduction targets in a Statewide effort to reduce emissions of
10 short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to
11 time; and

12 **WHEREAS**, the Office of Administrative Law approved regulations in 2020 (14 CCR,
13 Division 7, Chapter 12, and amended portions of regulations of 14 CCR, 24 CCR and 27 CCR)
14 (SB 1383 Regulations), which require cities, counties, and special districts providing solid waste
15 collection services to adopt and enforce an ordinance, or other enforceable mechanism, that
16 requires compliance with Sections 4.408.1 and 5.408.1 of the California Green Building
17 Standards Code, Part 11, Title 24 of the California Code of Regulations (CCR) which relate to
18 residential and non-residential construction waste management (CALGreen SB 1383 Baseline
19 Requirements); and

20 **WHEREAS**, the CALGreen SB 1383 Baseline Requirements mandate recycling or
21 reclaiming for reuse of nonhazardous C&D Debris per Sections 4.408.1 and 5.408.1 of the
22 California Green Building Standards Code, Title 24 of the CCR, Part 11; and

23 **WHEREAS**, this Ordinance is adopted pursuant to CalRecycle’s SB 1383 Regulations.
24 The SB 1383 Regulations were the subject of a program environmental impact report (EIR)
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1 prepared under the California Environmental Quality Act (CEQA) by CalRecycle. The activities
2 to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations
3 and its program EIR. No mitigation measures identified in the EIR are applicable to the City's
4 enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or
5 supplemental EIR, as described in CEQA, at Public Resources Code Section 21166, and its
6 regulations (CEQA Guidelines) at 14 CCR Sections 15162 and 15163, have occurred. The
7 program EIR therefore adequately analyzes any potential environmental effects of the
8 Ordinance, and no additional environmental review is required; and
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12 **WHEREAS**, on a separate and independent basis, this Ordinance is categorically exempt
13 in accordance with Section 15307 as an action taken by a regulatory agency as authorized by
14 California law to assure maintenance or protection of natural resources; and in accordance with
15 Section 15308 as an action taken by a regulatory agency as authorized by California law to assure
16 maintenance or protection of the environment.
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1 NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS
2 FOLLOWS:
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5 SECTION 1: CHAPTER 12, ARTICLE 11 OF THE ALBANY MUNICIPAL
6 CODE, ENTITLED “CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING,”
7 IS HEREBY AMENDED TO READ AS FOLLOWS:
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9 **“12-11 CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING**
10 **REQUIREMENTS**
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12 **§ 12-11.01 Title.**

13 The provisions of this Article, composed of Section 12-11.1 through Section 12-11.7,
14 inclusive, shall be known as the City of Albany “Construction and Demolition Debris Recycling
15 Requirements.

16
17 **§ 12-11.1 Purpose.**

18 This section is adopted in order to supplement the provisions of the California Integrated
19 Waste Management Act of 1989 which requires that each local jurisdiction in the State divert
20 fifty (50%) percent of discarded materials from landfills and aid in compliance with the Alameda
21 County Waste Reduction and Recycling Act of 1990 (Measure D), and to comply with the
22 requirements of CALGreen Sections 4.408.1 and 5.408.1, as well as the SB 1383 regulations set
23 forth in California Code of Regulations (“CCR”) Title 14, Section 18989.1(a)(2) (the Short-lived
24 Climate Pollutant Reduction Act of 2016). Applicants must comply with the California Green
25 Building Standards Code (“CALGreen”) requirements (CALGreen, Sections 4.408 and 5.408)
26 and any future changes to that Code. The requirements of CALGreen and the SB 1383
27 regulations include a minimum of 65% diversion rate for all covered Construction and
28 Demolition (“C&D”) Projects, with Project thresholds determined by the City, or as amended by

1 any future changes to that Code. These requirements shall apply to affected projects as specified
2 in this section.

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4 These regulations require the City to maximize the Recovery of C&D Debris through
5 commercially viable options and by requiring all Deconstruction, Demolition, and Construction
6 Projects to comply with the City’s requirements. The intent of these provisions is to Recover all
7 Recoverable amounts of C&D Debris and minimize C&D Debris Disposed. Applicants for
8 Projects are strongly encouraged to prioritize Deconstruction, Reclaim, Reuse, Recycling,
9 Composting, and non-Disposal Recovery for all C&D Debris generated by the Project. The City
10 intends for the maximum amount of C&D Debris to be Recovered and returned into the economic
11 mainstream, thereby conserving natural resources and stimulating markets for Recoverable
12 materials. The City Manager or their designee is authorized to establish guidelines to implement
13 the requirements of this Chapter, which may be amended from time to time.

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15 **§ 12-11.2 Definitions (A-Z).**

16 As used in this section:

17 APPLICANT — Shall mean any individual, firm, limited liability company, association,
18 partnership, political subdivision, government agency, municipality, industry, public or private
19 corporation, or any other entity whatsoever who applies to the City for the applicable permits to
20 undertake any construction, demolition, or renovation project within the City.

21 BUILDING — Shall mean construction, alteration, movement, enlargement, replacement,
22 repair, use and occupancy, location, maintenance, and removal of every structure or any
23 appurtenances connected or attached to such buildings or structures.

24 BUILDING OFFICIAL — Shall mean the designated staff person(s) authorized and responsible
25 for implementing this section.

26 CONSTRUCTION — Shall mean the building of any facility or structure or any portion thereof
27 including any tenant improvements to an existing facility or structure. Construction refers to
28 Standard Industrial Classification (“SIC”) Codes 1521 through 1794, 1796, and 1799.

1 CONSTRUCTION AND DEMOLITION DEBRIS (C&D Debris) — Shall mean discarded
2 materials, packaging, and rubble resulting from construction, renovation, or demolition
3 operations on any pavements, houses, commercial buildings, or other structures.
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5 CONTRACTOR — Shall mean any Person or entity holding, or required to hold, a contractor's
6 license of any type under the laws of the State of California, or who performs (whether as
7 contractor, subcontractor, owner-builder, or otherwise) any Deconstruction, Demolition, and
8 Construction in association with a Project.

9 CONVERSION RATE — Shall mean the rate set forth in the standardized Conversion Rate
10 Table approved by the City pursuant to this section for use in estimating the volume or weight
11 of materials identified in a debris recycling statement.

12 COVERED PROJECT — Shall have the meaning set forth in subsection 12-11.3a of this section.

13 DEBRIS RECYCLING STATEMENT — Shall mean the form completed and approved
14 pursuant to subsection 12-11.4 of this section, submitted by the applicant for any covered or
15 noncovered Project.

16 DECONSTRUCTION — Shall mean the process of systematically dismantling a structure, or a
17 portion thereof, to maximize the potential to Reclaim Reusable C&D Debris and minimize the
18 amount of C&D Debris that are Disposed. Deconstruction includes adherence to the City's health
19 and safety protocols for such activities.

20 DEMOLITION — Shall mean decimating, razing, ruining, tearing down or wrecking of any
21 facility, structure, pavement, or building, whether in whole or in part, whether interior or exterior.
22 Demolition refers to SIC Code 1795.

23 DISPOSAL or DISPOSED — Shall mean the final disposition of C&D Debris to a Landfill.

24 DIVERSION REQUIREMENT — Shall mean the diversion of one hundred (100%) percent of
25 the asphalt, concrete and similar material and at least ~~fifty~~ sixty-five (65%) percent, by weight,
26 of all other ~~construction and demolition debris~~ C&D Debris generated by the project, unless the
27 applicant has been granted an infeasibility exemption pursuant to subsection 12-11.4 of this
28 section, in which case the diversion requirement shall be the diversion of one hundred (100%)
percent of the asphalt, concrete and similar material, and the maximum feasible diversion of all

1 other ~~construction and demolition debris~~ C&D Debris generated by the project, as established
2 by the Building Official for the project.

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4 DIVERT — Shall mean to use material for any purpose other than disposal in a landfill.

5 FRANCHISE AGREEMENT — Shall mean the agreement between the City and its contractor
6 pursuant to California Public Resources Code section 40059(a) for solid waste, recyclable
7 materials, and organic materials services.

8 HEARING OFFICER — Shall have the meaning set forth in subsection 12-11.6 of this section.

9 LANDFILL — Shall mean a facility for the Disposal of non-Recoverable waste defined in CCR
10 Title 27.

11 NONCOVERED PROJECT — Shall have the meaning set forth in subsection 12-11.3b of this
12 section.

13 PERFORMANCE SECURITY — Shall mean any performance bond, surety bond, cashier's
14 check, letter of credit, or certificate of deposit submitted to the City pursuant to subsection 12-
15 11.4d of this section.

16 PERMIT — Shall mean a Deconstruction or Demolition and/or Construction permit issued by
17 the City's Building Department.

18 PROJECT — Shall mean activity which requires an application for a building permit and/or a
19 demolition permit or any similar permit from the City.

20 RECLAIM — Shall mean the controlled removal of C&D Materials from a Project for the
21 purpose of Reuse or Recycling.

22 RECYCLING — Shall mean the process of collecting, delivering, sorting, cleansing, treating,
23 and reconstituting materials that would otherwise become solid waste, and returning them to the
24 economic mainstream in the form of raw material for new, reused, or reconstituted products
25 which meet the quality standards necessary to be used in the marketplace.

26 RENOVATIONS — Shall mean the change, addition, or modification in an existing structure.

27 REUSE — Shall mean further or repeated use of construction or demolition debris.
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1 SALVAGE — Shall mean the controlled removal of construction or demolition debris from a
2 permitted building or demolition site for the purpose of recycling, reuse, or storage for later
3 recycling or reuse.
4

5 SUMMARY REPORT — Shall mean a form completed pursuant to subsection 12-11.5b of this
6 section, summarizing the diversion of ~~construction and demolition debris~~ C&D Debris generated
7 by a covered project.
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9 **§ 12-11.3 Diversion of Construction and Demolition Debris.**

10 a. Thresholds for Covered Projects. The provisions of this section shall apply to all
11 construction, demolition, and/or renovation projects within the City with a permit
12 valuation in excess of seventy-five thousand (\$75,000.00) dollars as determined by the
13 City's Building Official or designee. The seventy-five thousand (\$75,000.00) dollars
14 threshold shall be calculated as the total or projected costs of construction, demolition,
15 and/or renovation. Notwithstanding the foregoing, covered projects shall include any
16 project involving only demolition with a permit valuation in excess of twenty-five
17 thousand (\$25,000.00) dollars.

18 b. Noncovered Projects. Applicants for projects that do not meet the valuation threshold
19 requirement set forth in subsection 12-11.3a shall be encouraged to meet the diversion
20 requirement standards set forth in this section.

21 c. Compliance Gas a Condition of Approval. Compliance with the provisions of this section
22 shall be included as a condition of approval on all building and/or demolition permits
23 issued for covered Projects. The City has entered into an exclusive Franchise Agreement,
24 which provides ~~construction and demolition debris~~ C&D Debris collection services for
25 residential and commercial customers. Applicants may comply with this chapter in one
(1) of two (2) ways:

26 1. Applicants may use the ~~construction and demolition debris~~ C&D Debris
27 collection services of the City's contractor. As provided in the Franchise
28 Agreement, the City's contractor must provide ~~construction and demolition debris~~

1 C&D Debris collection upon the request of residential and commercial
2 customers; or

3
4 2. Applicants may elect to not use the City's contractor if they meet one of the
5 exceptions to the exclusivity of the Franchise Agreement with regard to
6 ~~construction and demolition debris~~ C&D Debris for:

7 (a) Commodities;

8 (b) Materials hauled by owner or occupant, or its contractor; or

9 (c) Donated materials.

10 d. Applicants must also comply with the CALGreen requirements and any future changes
11 to that Code.

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13 **§ 12-11.4 Debris Recycling Statements.**

14 a. Submission of Debris Recycling Statements. Applicants for building and/or demolition
15 permits involving covered projects shall complete and submit a debris recycling
16 statement (DRS) on a form provided by the City. The completed DRS form shall indicate
17 whether or not the applicant intends to use the City's contractor for its ~~construction and~~
18 ~~demolition debris~~ C&D Debris collection services.

19 b. Applicants shall ensure, for the life of the Project, that all C&D Debris Recovered or
20 Disposed are measured, recorded, and documented by weight or volume using the most
21 accurate method of measurement available. To the extent practicable, all C&D Debris
22 shall be weighed using scales that are compliant with all regulatory requirements for
23 accuracy and maintenance. For C&D Debris for which weighing is not possible due to
24 lack of scales or not practical due to Deconstruction and/or Reuse methods or other
25 considerations, a volumetric measurement may be used, or approximate weights may be
26 applied to detailed inventories. Applicants shall convert volumetric measurements to
27 weight using standardized conversion factors approved by the City. Applicants shall keep
28 all documentation of all Recovery and/or Disposal of all C&D Debris generated by
Project.

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2 c. Selection of City's Contractor. If the applicant's DRS form indicates that the City's
3 contractor will provide ~~construction and demolition debris~~ C&D Debris collection
4 services, either because the applicant does not fall within one of the exceptions to the
5 exclusive franchise or because the applicant falls within such an exception but chooses
6 to have ~~construction and demolition debris~~ C&D Debris collected by the City's
7 contractor, the applicant shall make arrangements directly with the City's contractor for
8 the collection of ~~construction and demolition debris~~ C&D Debris. Once the applicant
9 contacts the City's contractor for ~~construction and demolition debris~~ C&D Debris
10 collection services and makes a good faith effort to provide ~~construction and demolition~~
11 ~~debris~~ C&D Debris for collection by the City's contractor, the applicant will be deemed
12 to have complied with this section so long as the applicant submits a Summary Report
13 pursuant to subsection 12-11.5 of this section.

14 d. Election to Not Use the City's Contractor. Applicants that indicate on their DRS form
15 that they will not use the City's contractor for ~~construction and demolition debris~~ C&D
16 Debris collection must include and indicate all of the following on the completed DRS
17 form:

- 18 1. The specific exception of the Franchise Agreement under which the applicant
19 may refuse ~~construction and demolition debris~~ C&D Debris collection services
20 by the City's contractor;
 - 21 2. The estimated volume or weight of the ~~construction and demolition debris~~ C&D
22 Debris, by type of material generated;
 - 23 3. The estimated volume or weight of materials, by material type, that can feasibly
24 be diverted via reuse or recycling;
 - 25 4. The vendor or facility that the applicant proposes to use to collect and/or receive
26 the diverted material; and,
 - 27 5. The estimated volume or weight of materials that will be deposited in a landfill.
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1 For the purposes of this section, the applicant shall use standardized conversion rates,
2 approved by the City, to estimate the volume and weight of materials identified in the
3 DRS.
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5 Applicants that elect not to use the City's contractor may not rely on one of the above-
6 described exceptions for waste generated by human activity other than construction and
7 demolition. Applicant shall arrange for the collection of such waste on a weekly basis by
8 the City's contractor.

9 e. Performance Security. Applicants for all covered projects that have elected not to use the
10 City's contractor shall submit a performance security with the DRS. The amount of the
11 performance security shall be calculated as the lesser of three (3%) percent of total project
12 cost or ten thousand (\$10,000.00) dollars. Acceptable forms of performance security
13 include the following: performance bonds; surety bonds; cashier's checks; letters of credit
14 drawn on an established California bank; and certificates of deposit. The City's Building
15 Official may waive the performance security if the total security required pursuant to this
16 subsection would be fifty (\$50.00) dollars or less.

17 f. Review of Debris Recycling Statements.

18 1. Time frame for Review. The Building Official will review the DRS and advise
19 the applicant within five (5) working days of receipt of the DRS of the decision
20 regarding approval or non approval.

21 2. Approval of Debris Recycling Statement. No building, demolition or similar
22 permit shall be issued unless and until the Building Official has approved the
23 DRS for the project. A DRS shall only be approved if the Building Official
24 determines that the following conditions have been met:

- 25 (a) The DRS provides all of the information required by this section; and,
26 (b) The DRS form indicates that the applicant elects to use the services of the
27 City's contractor for ~~construction and demolition debris~~ C&D Debris
28 collection; or

1 (c) The DRS form indicates that the applicant elects not to use the City's
2 contractor; and

3 (1) The applicant has submitted an appropriate performance security
4 in compliance with this subsection; and

5 (2) The DRS indicates that one hundred (100%) percent of the asphalt,
6 concrete, and similar material, and at least fifty (50%) percent, by
7 weight, of all other ~~construction and demolition debris~~ C&D
8 Debris generated by the project as a whole will be diverted; or

9 (3) The DRS indicates that one hundred (100%) percent of the asphalt,
10 concrete, and similar material will be diverted, and has obtained
11 an exemption pursuant to paragraph 5(d) below; or

12 (4) The DRS indicates that the project will generate a negligible
13 amount of ~~construction and demolition debris~~ C&D Debris. The
14 determination of whether the project will generate a negligible
15 amount of ~~construction and demolition debris~~ C&D Debris shall
16 be at the discretion of the Building Official. If the Building
17 Official determines that the applicant has met the conditions set
18 forth above, the DRS shall be marked "Approved". A copy of the
19 approved DRS shall be returned to the applicant.

20 3. Non approval of Debris Recycling Statement. If the Building Official determines
21 that the applicant has failed to meet one (1) or more of the conditions set forth
22 above, the DRS will be returned to the applicant requesting full documentation of
23 the reasons that the requirements of this section cannot be met, or returned to the
24 applicant marked "Denied". If the DRS is returned marked "Denied", it shall be
25 accompanied by a statement of reasons for denial. No building permit shall be
26 issued for a project until the submitted DRS has been approved by the Building
27 Official.
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4. Emergency Demolition. No DRS is required where an authorized official of the City has made a determination that immediate demolition is required to protect the public health or safety from imminent peril.

5. Infeasibility Exception.

(a) Application of this Section: This subsection 12-11.4fe applies only to applicants for covered projects that have elected not to use the City's contractor.

(b) DRS Form: If an applicant 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 DRS required under subsection 12-11.4. The applicant shall indicate on the DRS the maximum rate of diversion and/or quantity of material 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.

(c) Meeting with Building Official: The City Building Official shall review the information supplied by the applicant and may meet with the applicant to discuss possible ways of meeting the diversion requirement. Upon request of the City, the Building Official may request that staff from the Alameda County Waste Management Authority attend this meeting. Based on the information supplied by the applicant and, if applicable, Alameda County Waste Management Authority staff, the Building Official shall determine whether it is possible for the applicant to meet the diversion requirement.

(d) Granting of Exemption: If the Building Official determines that it is infeasible for the applicant to meet the diversion requirement due to unique circumstances, the Building Official shall determine the maximum feasible diversion rate for each material and shall indicate this rate on the

1 DRS submitted by the applicant. The Building Official shall return a copy
2 of the DRS to the applicant marked "Approved for Infeasibility
3 Exemption" and shall notify the Building Department that the DRS has
4 been approved.
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- 6 (e) Denial of Exemption: If the Building Official determines that it is possible
7 for the applicant to meet the diversion requirement, he or she shall so
8 inform the applicant in writing. The applicant shall have thirty (30) days
9 to resubmit a DRS form in full compliance with subsection 12-11.4 of this
10 section. If the applicant fails to resubmit the DRS, or if the resubmitted
11 DRS does not comply with subsection 20.68.040 of the Albany Municipal
12 Code, the Building Official shall deny the DRS in accordance with
13 subsection 12-11.4e of the Albany Municipal Code.
14

15 **§ 12-11.5 Compliance.**

- 16 a. Weighing of ~~construction and demolition debris~~ C&D Debris. Applicants electing not to
17 use the City's contractor shall make every reasonable effort to assure that all ~~construction~~
18 ~~and demolition debris~~ C&D Debris diverted and/or deposited in a landfill is measured
19 and recorded using the most accurate method of measurement available. To the extent
20 possible, all ~~construction and demolition debris~~ C&D Debris shall be weighed by
21 measurement on scales. Such scales shall be in compliance with all regulatory
22 requirements for accuracy and maintenance. A volumetric measurement shall be used for
23 all ~~construction and demolition debris~~ C&D Debris for which weighing is not practical
24 due to small size or other considerations. Volumetric measurements shall be converted
25 to weight by using the conversion rates approved by the City for this purpose.
- 26 b. Determination of Compliance. Within thirty (30) days after the completion of any
27 covered project, the applicant shall complete and submit a summary report on a form
28 provided by the City. Applicants may demonstrate compliance with this section in one
(1) of two (2) ways:

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1. Applicants may demonstrate compliance by submitting a summary report indicating that it used the services of the City's contractor for ~~construction and demolition debris~~ C&D Debris collection; or

2. Applicants that did not use the City's contractor for ~~construction and demolition debris~~ C&D Debris collection shall so indicate on the Summary Report and include supporting documentation such as receipts and weights tags for ~~construction and demolition debris~~ C&D Debris generated by the covered project. The Building Official shall review the Summary Report and its supporting documentation to determine whether the applicant has achieved the diversion requirement. Such determination shall be based upon the requirements of this section and the following guidelines:

(a) Full Compliance: The applicant shall be found to have fully complied with this section if the Building Official determines that the applicant has complied with the diversion requirement applicable to the project. If the Building Official determines that the Applicant has fully complied with the Diversion Requirement applicable to the Project, he or she shall cause the full amount of the Performance Security to be released to the Applicant.

(b) Good Faith Effort to Comply: If the Building 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 section. In making this determination, consideration may be given to information submitted by the applicant, including but not limited to the availability of markets for the ~~construction and demolition debris~~ C&D Debris that was not diverted, the size and nature of the project, and the documented efforts of applicant to divert ~~construction and demolition debris~~ C&D Debris and the barriers encountered. If the Building Official determines that the applicant has made a good faith effort to comply with the diversion requirement and documentation provisions

1 herein above set forth, he or she shall release the performance security, or
2 a portion thereof, to the applicant. Any portion of the performance security
3 not released to the applicant shall be forfeited to the City and shall be used
4 for the purposes of promoting recycling within the City.
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6 (c) Noncompliance: If the Building Official determines that (1) the diversion
7 requirement applicable to a covered project has not been achieved; (2) the
8 applicant has failed to submit the documentation required by this section
9 within the required time period; or (3) that a good faith effort was not
10 made, then the applicant shall be in "Non Attainment" status and the
11 performance security shall be forfeited to the City. All forfeited
12 performance securities shall be used for the purposes of promoting
13 recycling within the City.
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15 c. Right to Monitor and Inspect. The City shall have the right to inspect all covered projects
16 subject to this section to determine levels of actual diversion activities and validate the
17 information contained in the DRS and Summary Report. Upon request by the City, an
18 applicant electing not to use the City's contractor shall provide documentation, papers
19 and records relating to the disposal of ~~construction and demolition debris~~ C&D Debris
20 for an affected project

21 d. Supporting Documentation. Applicants for all covered projects that have elected not to
22 use the City's contractor shall retain receipts and weight tags for the quantities of
23 materials reused, salvaged, recycled, and deposited in a landfill as indicated in the
24 Summary Report for a period of one (1) year following the final inspection and issuance
25 of temporary or final certificate of occupancy. Applicant shall make such records
26 available to the City for inspection and copying upon request.

27 e. Targeted Materials. In furtherance of the goals established by this section, the
28 Community Development Director shall establish a list of materials that could potentially
 be reused, recycled, or salvaged, and may amend the list based upon local markets and

1 conditions, the economic feasibility of compliance and the availability of local recycling
2 facilities.
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5 **§ 12-11.6 Appeals.**

6 Any applicant affected by any decision, action, or determination made by the Building Official
7 regarding this section may file with the City Clerk a written appeal within ten (10) days of such
8 decision, action, or determination, setting forth in detail the facts supporting the applicant's appeal.
9 The City Manager shall appoint a Hearing Officer who shall hear the appeal within thirty (30) days
10 from the date of filing. The Hearing Officer shall render a written decision within fourteen (14) days
11 of the close of the hearing. The Hearing Officer's determination shall be final.
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13 **§ 12-11.7 Enforcement.**

14 Notwithstanding any other provision of this section, violations of this section may be enforced in
15 the following manner: (1) Pursuant to Chapter 1 of this Code; (2) by a stop work order issued by
16 the Building Official where work on the project has already commenced; or (3) in any other manner
17 provided by law.”

18 **SECTION 2. SEVERABILITY.**

19
20 If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason
21 held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such
22 decision shall not affect the validity of the remaining portions of the Chapter. The City Council
23 hereby declares that it would have passed this Ordinance and each section, subsection, clause, or
24 phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or
25 phrases may be declared invalid or unconstitutional.
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1 **SECTION 3: PUBLICATION AND EFFECTIVE DATE.**

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3
4 This Ordinance shall be posted at three public places within the City of Albany and shall
5 become effective thirty days after the date of its posting.

6 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
7 the 15th day of July, 2024, by the following vote:

8 AYES:

9 NOES:

10 ABSENT:

11 ABSTAIN:

12
13 _____
14 JOHN MIKI, MAYOR
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