



DATE: December 14, 2015

AGENDA ITEM # 2

**TO:** Environmental Commission

**FROM:** J. Logan, Staff Liaison

**SUBJECT:** Construction and Demolition Ordinance

**RECOMMENDATION:**

Receive report on development of the Construction and Demolition Ordinance

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**BACKGROUND**

On March 25, 2014, City Council considered a draft solid waste ordinance and gave direction to staff on the revisions and directed the Environmental Commission to review the revised ordinance before staff reported back to Council.

Former Public Works Director Jim Gustafson attended the Environmental Commission meeting on April 14, 2014. In his presentation, Mr. Gustafson provided an overview of the draft ordinance, led discussion, responded to questions and assisted the Environmental Commission in its review of the draft ordinance. The Commission took action to appoint a subcommittee composed of Chair Hedden, Vice Chair Keller, and Commissioner Yuan. Staff or Mr. Gustafson and, on occasion, solid waste consultant, Richard Tagore-Erwin, continued to provide reports to the Commission on April 14, May 12, June 9, July 14, and August 11 and concluded the review with a final report on Sept. 8, 2014. Action taken by the Commission at the September meeting was as follows:

*Action: Upon a motion by Commissioner Bray, seconded by Commissioner Eyre, the Commission unanimously supported staff report recommendations and recommended support to Council to: 1. Separate Solid Waste Ordinance from new C&D (construction and demolition) requirements; 2. Incorporate Commercial and Multi-family recycling; 3. Incorporate Special Event Recycling; 4. C&D actions to be integrated into the Green Building Code*

At the August 10, 2015 Environmental Commission meeting, Public Works Engineering Services Manager, Chris Lamm provided the Commission with an updated report and plan of action for the final report to Council on the solid waste ordinance revisions. The plan includes the following steps:

1. **Solid Waste Municipal Code:** Revise the draft municipal code to streamline requirements and increase efficiency for City's administration and customer compliance; In addition to items previously discussed in the revisions to the ordinance, current revisions will add new requirements for compliance with AB 1826 (Mandatory commercial organics recycling) and AB 1594 (removal of Alternative Daily Cover ADC from diversion reporting). Staff will remove the Construction and Demolition (C&D) requirements, which will be introduced as a separate ordinance.

2. **C&D Ordinance and Work Plan:** Develop a C&D ordinance and work plan to implement and monitor the new changes to the Solid Waste section of the Municipal Code and C&D Ordinance and consider activities to foster recycling and utilization of organics.
3. **Environmental Commission Involvement:** Present a summary of the proposed C&D ordinance and work plan at a future Environmental Commission Meeting.
4. **City Council Study Session:** On October 13, 2015, a Council study session was held on the proposed solid waste municipal code changes.

## **DISCUSSION**

On November 24, 2015, Council introduced Ordinance No. 2015-417, replacing Chapter 6.12 – Solid Waste of the Los Altos Municipal Code in its entirety. The Ordinance was adopted at the December 8, 2015 Council Meeting.

In accordance with the solid waste ordinance revision plan of action, staff prepared a draft Construction and Demolition Ordinance and will present the draft to the Environmental Commission at its December 14, 2015 meeting for discussion and action.

Due to changes in the membership of the Environmental Commission, a new C&D subcommittee was appointed composed of Commissioners Yuan, Weiden and Eyre.

## **ATTACHMENT:**

- A. Draft report on the Construction and Demolition Ordinance

## Construction and Demolition Ordinance Report

In accordance with the solid waste ordinance revision plan of action, staff prepared a draft Construction and Demolition Ordinance. This report provides information related to background, the proposed ordinance and next steps.

### Background

The City has by way of Los Altos Municipal Code Section 12.26.010 adopted the 2013 California Green Building Standards Code (CALGreen). Sections 4.408 and 5.408 of CALGreen require the diversion of at least 50 percent of the construction and demolition (C&D) waste generated from residential and commercial projects. Per CALGreen, projects may meet the 50 percent diversion requirement via one of the following methods:

1. Completing a detailed construction waste management plan that identifies construction and demolition waste materials to be diverted from landfill and the handling, sorting, and the end destinations of those materials, with documentation of overall 50 percent diversion or greater;
2. Utilize a waste management company, approved by the enforcing agency, which can provide verifiable documentation of percentage of construction and demolition waste material diverted from landfill;
3. Provide verifiable documentation of not exceeding a maximum amount of construction and demolition waste materials per square foot (varies by project type) as defined by CALGreen; or
4. Meet a local construction and demolition waste management ordinance, if more stringent than CALGreen.

Though each of these methods may be utilized to demonstrate compliance with CALGreen's diversion requirement, they represent varying levels of administration implementation to local governments. Currently, the City's administration of CALGreen is a variation on method #1 where a 3<sup>rd</sup> party green rater certifies compliance via a checklist provided to the City. While the responsibility of compliance is placed on the permit/applicant holder, it does not provide the City with sufficient information to easily demonstrate compliance with CALGreen to CalRecycle and simultaneously makes it difficult to identify opportunities to establish incentives or other programs to increase C&D diversion.

### Proposed Ordinance

In order to address the issues discussed above, and facilitate opportunities for the City to encourage and incentivize greater diversion of C&D materials in the future, it is recommended that the City adopt a C&D Ordinance that would:

- Require all projects that are required to recycle under CALGreen to use the City's franchise waste hauler, Mission Trails Waste Systems (MTWS) or direct waste to a facility certified to meet the City's standards for diversion of C&D materials;

- Require all projects that are required to recycle under CALGreen to submit proof of compliance (e.g. weight tickets) to the City prior to final building inspection;
- Provide for the City to certify C&D recycling facilities periodically via resolution; and
- Establish the option for City to implement an incentive program to support the provision of debris box services through MTWS and/or otherwise direct C&D materials to certified facilities.

A draft C&D recycling ordinance is included as Attachment A. As proposed, the ordinance addresses enforcement in a manner that is identical to the newly adopted Solid Waste Ordinance in order to ensure consistency with the Los Altos Municipal Code and to allow for enforcement as necessary without including undue burdens on the City or building permit applicants/holders.

### **Next Steps**

Staff will review and consider comments received from the Environmental Commission and incorporate them as necessary. Staff will also work with the Environmental Commission C&D subcommittee to further refine the proposed ordinance. Depending on the level of comments received from the Environmental Commission and the C&D subcommittee, further discussion with the entire Environmental Commission may be scheduled if necessary. Upon completion of Environmental Commission review, the draft ordinance will be reviewed by the City Council at a study session and the adoption of the ordinance is anticipated in late spring or early summer of 2016.

**ORDINANCE NO. 2016-\_\_\_****AN ORDINANCE OF THE CITY COUNCIL OF CITY OF LOS ALTOS AMENDING THE LOS ALTOS MUNICIPAL CODE, BY ADDING A NEW **ARTICLE XX** ENTITLED “COLLECTION, RECYCLING AND DISPOSAL OF WASTE GENERATED FROM CONSTRUCTION, DEMOLITION, AND RENOVATION PROJECTS WITHIN THE CITY OF LOS ALTOS”**

**WHEREAS**, the City Council of the City of Los Altos (“City”) finds that the State of California through its California Waste Management Act of 1989 (AB 939) and Alternative Compliance Act of 2008 (SB 1016) requires that each local jurisdiction in the State divert 50% of discarded materials from landfill garbage disposal on a per capita basis; and

**WHEREAS**, City desires to implement a program to support its achievement of the goal to increase the diversion of materials from landfill disposal and transformation facilities to reach 78% diversion; and

**WHEREAS**, the City finds that construction, demolition and renovation waste materials (C&D materials), which are comprised of the left over material resources and other wastes resulting from deconstruction, demolition, construction and renovation projects, constitute a significant portion of divertible waste generated within the City; and

**WHEREAS**, the City finds that the California Green Buildings Standards Code (CALGreen) currently requires certain residential and commercial construction and demolition projects to recycle or divert a minimum of 50% of nonhazardous C&D materials; and

**WHEREAS**, the City finds that many C&D materials can be diverted from landfill disposal via recycling, composting, reuse, and other methods including use as biomass conversion and alternative daily cover; and

**WHEREAS**, the City finds that diversion of C&D materials described herein is essential to further the City’s efforts to reduce waste and comply with AB 939, AB 32, AB 341, help achieve the State’s 75% diversion goal by 2020 and the City’s goal of 78% diversion, and exceed CALGreen diversion requirements; and

**WHEREAS**, the City finds that building projects can seek to divert C&D materials via a number of means, including: deconstruction and/or reuse; recycling by source separation; and commingled collection and sorting of mixed C&D materials with the purpose of diverting C&D materials; and

**WHEREAS**, the City finds that deconstruction, reuse, and recycling by source separation of C&D materials are the most desirable ways to ensure that resources are used to their highest potential by reducing upstream waste, and reducing the City’s ecological footprint; and

**WHEREAS**, the City finds that deconstruction, reuse and recycling by source separation of C&D materials may not be possible for all building projects due a variety of reasons, including but not limited to cost, type of building, project design, and site space available for waste management activities; and

**WHEREAS**, the City finds that commingled collection and sorting of mixed C&D materials with the purpose of recycling divertible C&D materials is an important strategy to ensure maximum diversion; and

**WHEREAS**, the City finds that generators of C&D materials in the City may either use debris boxes provided by the City's franchised hauler or self-haul C&D materials; and

**WHEREAS**, the City's franchised hauler of debris boxes provides source separated and commingled collection of C&D materials and recycles those loads at solid waste facilities that are known to achieve high levels of diversion of C&D materials; and

**WHEREAS**, the City currently does not retain information regarding the amount of diversion achieved by those who self-haul their C&D materials; and

**WHEREAS**, projects that self-haul C&D materials are not currently required to provide the City with adequate documentation of compliance with the CALGreen 50% diversion requirement and may or may not achieve the same diversion of C&D materials that is possible with the City's franchised hauler; and

**WHEREAS**, the City finds that it may certify solid waste facilities that recycle source separated and/or commingled C&D materials with the purpose of diverting maximum levels of C&D materials; and

**WHEREAS**, the City may furthermore require all C&D materials generated by applicable building projects within the City to be directed to City-certified solid waste facilities; and

**WHEREAS**, the City finds that all applicable building projects must provide documentation of diversion of C&D materials to the City prior to final inspection so that the City may demonstrate compliance with CALGreen; and

**WHEREAS**, such documentation of diversion of C&D materials will provide the City with the ability to identify trends and opportunities to affect increased diversion of C&D materials; and

**WHEREAS**, the City finds that it may be necessary in the future to develop an incentive or other program, at the City's discretion, to support the provision of debris box services through the City's franchised hauler and/or otherwise direct C&D materials to certified facilities.

**NOW THEREFORE**, the City Council of the City of Los Altos does hereby ordain as follows:

## SECTION 1. AMENDMENT OF CODE.

Los Altos Municipal Code is hereby amended by adding to Title 6 a new Chapter **6.XX** entitled “Collection, Recycling and Disposal of Waste Generated from Construction, Demolition, and Renovation Projects within the City of Los Altos.”

### **CHAPTER 6.XX – COLLECTION, RECYCLING AND DISPOSAL OF WASTE GENERATED FROM DECONSTRUCTION, DEMOLITION, CONSTRUCTION AND RENOVATION PROJECTS WITHIN THE CITY OF LOS ALTOS**

#### **6.XX.010 Definitions.**

- A. “Alternative daily cover (ADC)” means cover material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.
- B. “Applicant” means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the City for the applicable permits to undertake any construction, demolition or renovation project within the City.
- C. “Biomass conversion” means the controlled combustion, when separated from other solid waste and used for producing electricity or heat, of (1) agricultural crop residues; (2) bark, lawn, yard, and garden clippings; (3) leaves, silviculture residue, tree and brush pruning; (4) wood, wood chips, and wood waste; or (5) non-recyclable pulp or non-recyclable paper.
- D. “CALGreen” means the 2013 Green Building Standards Code, as adopted by the City per Ordinance No. 2013-395, Chapter 12.26 of the City’s Municipal Code.
- E. “CALGreen diversion requirement” means the requirement to recycle and/or salvage for reuse a minimum threshold of the non-hazardous C&D waste in accordance with CALGreen Section 4.408 (residential projects) and Section 5.408 (non-residential projects). This threshold is 50% for the 2013 Green Building Standards Code, and may change over time as the Green Buildings Standards Code is amended and adopted by the City. If the requirement to recycle and/or salvage for reuse in CALGreen is changed, including but not limited to changes in the percentage of required recycling/salvage for reuse, changes in the section numbers referring to recycling requirements, or changes in the definition of recycling, then this definition will refer to the appropriate terms and sections in the most updated and adopted Green Building Standards Code.
- F. “Certified facility” means a solid waste processing or reuse facility determined to process incoming C&D materials to divert those materials from landfill disposal or transformation for which the City has issued a certification.

- G. “City Manager” means the City Manager of the City of Los Altos, or his/her designee, including City employees or entities hired by the City to implement the requirements of this Ordinance.
- H. “C&D materials” or “Construction and demolition debris” means commonly used or discarded materials removed from deconstruction, demolition, construction, remodeling, repair or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical wire, fiberglass, formica, granite, iron, lead, linoleum, marble, plaster, plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavement, houses, commercial buildings and other structures. Construction and demolition debris does not include exempt waste.
- I. “Deconstruction” means a process to carefully dismantle or remove usable materials from structures prior to, or as an alternative to, demolition.
- J. “Debris box” means any ten (10) to forty (40) cubic yard container, or any compactor provided by a solid waste generator, placed in the public right-of-way, on City property, private property, or elsewhere in the service area, which is procured by a solid waste generator for their use in the collection of their solid waste. Debris boxes are serviced by means of lifting the entire container, including all contents, onto a designated collection vehicle.
- K. “Diversion” or “Diverted” means a reduction of the amount of waste being disposed in a landfill or transformation facility by any of the following methods:
1. Use of new construction methods, as described in regulations promulgated by City, that reduce the amount of waste generated.
  2. On-site re-use of the waste.
  3. Source separation: sorting of different waste materials at its point of generation for more efficient recycling or final disposal.
  4. Delivery of the waste from the site to a Certified facility.
  5. Other methods as approved in regulations promulgated by the City.
- L. “Divertible C&D materials” means C&D Materials that can be diverted from landfill through deconstruction, reuse, and/or recycling subject to current technologies and market conditions.
- M. “Franchised hauler” means a hauler holding a franchise, contract, license or permit issued by the City which authorizes the exclusive or non-exclusive right to provide solid waste handling services within all or part of the jurisdictional boundaries of the City.

- N. “Generator” means a project that generates C&D materials.
- O. “Project” means any residential or non-residential construction, demolition or renovation which is required to recycle C&D materials per CALGreen.
- P. “Recyclable materials” or “recyclables” mean those materials separated from garbage by the generator which are capable of being recycled and which would otherwise be processed or disposed of as garbage.
- Q. “Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become garbage and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place. Recycling does not include transformation as defined in Public Resources Code §40201.
- R. “Reuse” means using an object or material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material.
- S. “Self-haul” means when a generator collects solid waste at their premises or place of business for the purpose of hauling those materials in their own vehicles to permitted solid waste facilities (for garbage and organics) or facilities that accept and responsibly process other solid wastes (excluding garbage and organics) in compliance with the requirements of this Ordinance.
- T. “Solid waste” means garbage, recyclable materials, organic materials, construction and demolition debris, large items, E-waste, universal waste or exempt waste.
- U. “Source separate” means the process of removing recyclable materials from garbage at the place of discard generation, prior to collection, into separate containers that are separately designated from recyclable materials, organic materials, or garbage for the purposes of recycling.
- V. “Transformation” means incineration, pyrolysis, distillation, gasification or biological conversion other than composting. “Transformation” does not include composting or biomass conversion.

## **6.XX.020 General Provisions.**

### **A. Building Permit Applicants Responsible for Compliance.**

Each applicant, as defined in **6.XX.010(B)**, shall be responsible for ensuring and demonstrating its compliance with the requirements of this Chapter, for all projects that are required to recycle C&D materials per CALGreen.

### **B. C&D Materials Diversion Required.**

Each applicant shall divert C&D materials through deconstruction, reuse, and/or recycling for each applicable project. Applicants can recycle C&D materials by using the services of the City’s franchised hauler or by self-hauling C&D materials to certified facilities.

### C. Exemptions.

Diversion of C&D materials is not required for work for which a building permit is not required under Title X Chapter XX.XX., or for projects that require a building permit but do not meet the thresholds for recycling C&D materials per CALGreen. It is unlawful to split or separate a project into small work projects for the purpose of evading the requirements of this Section XX-4.

### 6.XX.040 Certification Standards for C&D Facilities.

The City may certify solid waste processing or reuse facilities that have been determined to process divertible C&D materials for diversion from landfill disposal or transformation in compliance with these standards. The City may certify a C&D facility if the owner/operator of the facility demonstrates and documents all of the following to the satisfaction of the City Manager:

- A. That the facility has obtained all applicable Federal, State, and local permits, and is in full compliance with all applicable regulations;
- B. That sorting of mixed C&D materials is conducted such that recycling of divertible C&D materials is maximized; and
- C. That the facility achieves a minimum level of 50% diversion every month, with supporting documentation of diversion of C&D materials for the prior 12 months. Facilities that achieve levels of diversion equal to or greater than the level of diversion achieved by the facilities used by the City's franchised hauler will receive preference for C&D certification by the City.

Certification of C&D facilities shall be by City resolution. The City may require site visits to facilities by the City or its designee to verify the accuracy of information provided by the operator/owner. The City may conduct recertification of certified facilities annually or as necessary to ensure that the above-mentioned standards are met for each facility. The City will make available to each building permit applicant a current list of certified facilities.

### 6.XX.030 Documentation.

#### A. Design Verification.

Except as otherwise specified in this Chapter, on or after the date this Ordinance is enacted, prior to issuance of a building permit, each applicant whose project is required to recycle C&D materials per CALGreen must verify that C&D materials generated by the project will be diverted via one or more of the following methods:

1. Deconstruction and/or reuse of C&D materials;
2. Source separation and diversion of C&D materials with the franchised hauler or at a certified facility; or

3. Commingled collection and sorting of mixed C&D materials with the franchised hauler or at a certified facility.

#### **B. Implementation Verification.**

Except as otherwise specified in this Chapter, on or after the date this Ordinance is enacted, each applicant whose projects is required to recycle C&D materials per CALGreen shall provide the City with documentation of compliance with this Ordinance prior to final building inspection. Documentation of C&D materials diversion includes receipts from the franchised hauler, weight tickets from certified facilities for all loads delivered for recycling, or such additional information deemed necessary by the City to document accomplishment of the requirements of this Ordinance

#### **6.XX.050 Incentive Program for C&D Materials Diversion.**

The City, at its discretion, may develop and offer an incentive programs as necessary to support the provision of debris box services through the franchised hauler and/or otherwise direct C&D materials to certified facilities.

#### **6.XX.120 Enforcement.**

##### **A. City Manager Authorization.**

The City Manager is authorized to administer and enforce the provisions of this Chapter. The City Manager, or anyone designated by the City Manager to be an enforcement officer, may exercise such enforcement powers. If the City Manager determines that a generator of C&D materials is in violation of this Chapter or of any rule or regulation adopted pursuant to this Chapter, the City Manager may begin enforcement proceedings. Public nuisance proceedings and/or code enforcement proceedings under the City's code shall apply, in addition to the administrative penalties approved by resolution of the City Council, as modified from time to time. Enforcement proceedings may include issuing notices of violation, requiring changes in subscription service levels or assessing administrative fines.

##### **B. Administrative Citations and Orders.**

If the City Manager determines that a generator of C&D materials is in violation of this Chapter, the City Manager may issue administrative citations or orders pursuant to the Los Altos Municipal Code Chapter 1.30, for violations of this Chapter or of any rule or regulation adopted pursuant to this Chapter, except as otherwise provided in this Chapter. The City's procedures on imposition of administrative fines are hereby incorporated in its entirety and shall govern the imposition, enforcement, collection and review of administrative citations or orders issued to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter, provided, however, that the City Manager may adopt regulations providing for lesser penalty amounts. The City Manager has the authority to impose administrative penalties for the notices of violations.

### **C. Additional Remedies.**

The City Attorney may seek injunctive relief or civil penalties in the superior court in addition to the above remedies and penalties. All administrative civil penalties collected from actions pursuant to this section shall be paid to the City and shall be deposited into a solid waste administrative account that is available to fund activities to implement the applicable provisions of this section. Any remedy provided under this section is cumulative to any other remedy provided in equity or at law. Nothing in this Chapter shall be deemed to limit the right of the City or its authorized collection agent(s) to bring a civil action; nor shall a conviction for such violation exempt any person from a civil action brought by the City or its authorized collection agent(s). The fees and penalties imposed under this Chapter shall constitute a civil debt and liability owing to the City from the persons, firms or corporations using or chargeable for such services and shall be collectible in the manner provided by law. Nothing in this Chapter shall be deemed to impose any liability upon the City or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). This Chapter does not do any of the following:

1. Otherwise affect the authority of the City Manager to take any other action authorized by any other provision of law.
2. Restrict the power of a City attorney, district attorney or the attorney general to bring in the name of the people of California, any criminal proceeding otherwise authorized by law.
3. Prevent the City Manager from cooperating with, or participating in, a proceeding specified in 6.12.120.
4. Affect in any way existing contractual arrangements, including franchises, permits or licenses, previously granted or entered into between the franchised hauler and City.

### **6.12.140 Forms, Regulations and Guidelines.**

The City Manager may adopt necessary forms, rules, regulations and guidelines which may be necessary or desirable to aid in the administration or enforcement of the provisions of this Chapter. The City may provide information on its website regarding what materials are accepted as C&D Materials under this Chapter.

## **SECTION 2. CONSTITUTIONALITY.**

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

## **SECTION 3. PUBLICATION.**

This Ordinance shall be published as provided in Government Code section 36933.

**SECTION 4. EFFECTIVE DATE.**

This Ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing Ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on \_\_\_\_\_, 2016 and was thereafter, at a regular meeting held on \_\_\_\_\_, 2016 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Jeannie Bruins, MAYOR

Attest:

\_\_\_\_\_  
Jon Maginot, CMC, CITY CLERK