

**ORDINANCE NO. 2023-762**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA ADDING  
CHAPTER 15.48, TO TITLE 15 OF THE FORTUNA MUNICIPAL CODE -  
CONSTRUCTION AND DEMOLITION DEBRIS DIVERSION (CD3)**

**WHEREAS**, the State of California, through its California Waste Management Act of 1989 (Assembly Bill 939), requires that each local jurisdiction in the state divert 50 percent of discarded materials from landfills; and

**WHEREAS**, the California Green Building Standards Code (“CalGreen”) requires jurisdictions to divert at least 65% of all construction and demolition debris from construction, demolition, and renovation projects; and

**WHEREAS**, the City desires to ensure to reduce the amount of debris entering landfills to the greatest extent feasible;

**NOW, THEREFORE, the City Council of the City of Fortuna, State of California, does ordain as follows:**

**SECTION 1.** Code Amendment. Chapter 15.48 of the Fortuna Municipal Code is hereby added in its entirety as set forth in **Exhibit “1”** hereto and incorporated herein.

**SECTION 2.** The City Council finds that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14, Chapter 3, CCR, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance adopts standard codes in effect pursuant to state law and sets requirements for compliance. The adoption of this ordinance does not entitle new development or any changes to the physical environment.

**SECTION 3.** Severability. If any subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 4.** Conflicts. All ordinances and parts of ordinances or resolutions, in conflict herewith, are hereby repealed to the extent of such conflicts and no further.

**SECTION 5.** Effective Date. The effective date of this ordinance is thirty (30) days after its adoption by the City Council.

**INTRODUCED AND FIRST READING PERFORMED** on the 7th day of August 2023 by the following vote:

AYES:  
NAYS:  
ABSENT:  
ABSTAIN:  
ATTEST:

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Tami Trent, Mayor

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Siana Emmons, City Clerk

**SECOND READING PERFORMED AND ADOPTED** on the \_\_\_\_\_ day of \_\_\_\_\_,  
2023 by the following vote:

AYES:  
NAYS:  
ABSENT:  
ABSTAIN:  
ATTEST:

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Tami Trent, Mayor

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Siana Emmons, City Clerk

**Exhibit “1”**

**Chapter 15.48  
CONSTRUCTION AND DEMOLITION DEBRIS DIVERSION  
CD3**

**15.48.005 Definitions**

For the purposes of this chapter, the following definitions shall apply:

- A. “Applicant” means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the city for the applicable permits or approvals to undertake construction, demolition or renovation projects within the city.
- B. “AB 939” shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- C. “CalGreen” means the California Green Building Standards Code, which is codified as Part 11 of Title 24 of the California Code of Regulations.
- D. “Construction” means the building or improvement of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.
- E. “Construction and Demolition Debris” (“C&D debris”) means used or discarded materials removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair or demolition operations on any pavement, residential or commercial building or other structure.
- F. “Conversion factor” means the value set forth in the standardized volume-to-weight conversion table approved by the City pursuant to this chapter for use in estimating the volume or weight of materials identified in a Waste Management Plan (WMP).
- G. “Covered project” means projects that shall be subject to the requirements of this Ordinance.
- H. “Deconstruction” means the process of carefully dismantling a building or structure in order to salvage components for reuse or recycling.
- I. “Demolition” means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.
- J. “Divert” means activities that reduce or eliminate discarded materials from

disposal in a landfill, including, reuse, salvage, recycling, and composting.

- K. "Diversion Requirement" means diversion from the waste stream of at least 65% (or other percentage as stipulated by CalGreen) of the total construction and demolition debris generated by a project via reuse or recycling, unless the applicant has been granted an infeasibility exemption pursuant to Section 15.48.030, in which case the diversion requirement shall be the maximum feasible diversion rate established by the WMP compliance official for the project.
- L. "Non-covered project" shall have the meaning set forth in Section 15.48.015(B) of this chapter.
- M. "Project" means any activity, which requires an application for a building, grading or demolition permit, or any similar permit from the city.
- N. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include gasification, pyrolysis, transformation as defined by State Public Resources Code Section 40201, or other processes that use solid waste for conversion to energy.
- O. "Renovation" means any change, addition, or modification in an existing structure for which a permit is required.
- P. "Reuse" means further or repeated use of construction or demolition debris.
- Q. "Salvage" means the controlled removal of construction or demolition debris from a permitted building or demolition site for the purpose of recycling, reuse or storage for later recycling or reuse.
- R. "Solid Waste" shall have the same meaning as provided in subdivision "III" of Section 8.14.010 of Chapter 8.14 this Code, and shall exclude recyclables placed in an approved recycling container.
- S. "Total costs" means the total construction value of the project using standard commercial and residential valuation formulas.
- T. "Waste Management Plan" ("WMP") means a completed WMP form, approved by the city for the purpose of compliance with this chapter, submitted by the applicant for any covered project.

The WMP shall identify anticipated C&D debris materials that will be generated for disposal and recycling. The WMP will record actual material weight or volume and disposal and recycling receipts.

- U. “WMP compliance official” (“official”) means the city employee(s) designated by the City Manager authorized and responsible for implementing this chapter.

#### **15.48.010 Diversion Requirement**

The applicant for a covered project, as defined below, shall divert at least 65% (or such other percentage as stipulated by CalGreen) of construction and demolition debris unless the applicant is granted an infeasibility exemption.

#### **15.48.015 Threshold for Covered Projects.**

- A. **Covered Projects.** Each of the following types of projects shall be considered a covered project and shall comply with the requirements of this Chapter:
1. All new construction projects;
  2. Non-residential building additions and building alteration projects;
  3. Residential additions and alterations that increase a building's footprint, volume, or size;
  4. Demolition projects associated with new construction, additions, and alterations covered by subsections (A)(1), (A)(2), and (A)(3) above;
  5. Non-residential excavation and grading projects associated with new construction, additions, and alterations projects covered by subsections (A)(1) and (A)(2) above; and,
  6. Residential excavation and grading projects associated with new construction, additions, and alterations projects covered subsections (A)(1) and (A)(3) above that require grading permits pursuant to the requirements of this Code

For the purposes of determining whether a project meets the foregoing thresholds for a covered project, all phases of the project and all related projects taking place on a single or adjoining parcel shall be deemed a single project.

- B. **Non-covered Projects.** Immediate or emergency demolition required to protect the public health, safety or welfare, as determined by a public safety official or code compliance officer shall be considered a non-covered project. Projects eligible for an exemption as described in the (CalGreen) Mandatory Residential and Non-Residential Measures shall be considered “non -covered.”
- C. **Building and Demolition Permits:** Compliance with the provisions of this chapter shall be identified as a condition of approval on any building or demolition permit issued for a covered project.

#### **15.48.020 Submission of the Waste Management Plan (WMP).**

- A. **WMP Form.** All applicants for covered projects shall complete and submit a WMP in accordance with a City-approved format (paper form or online system) as part of the application requirements for a building, grading or demolition permit. The completed WMP shall include all of the following:
1. Identification of C&D debris material to be generated by the project and be diverted from disposal by recycling, reuse, or salvage;
  2. For each type of C&D debris material, declare whether the disposal method will be "Recycle", "Salvage" or "Landfill";
  3. For each type of C&D debris material which will be diverted, identification of the vendor or facility that will collect or receive the material and identify the approved or certified diversion rate achieved by that vendor or facility.
  4. Specify that the amount of construction and demolition waste materials diverted shall be calculated by weight or volume, but not by both.
- B. **Deconstruction and Material Salvage.** In preparing the WMP, applicants for building or demolition permits involving the removal of all or part of an existing structure shall consider deconstruction to the maximum extent feasible, and shall make the materials generated thereby available for salvage prior to being transported for disposal to a recycling center, transformation facility, or landfill.

#### **15.48.025 Diversion Security Deposit Required**

Each applicant of a covered project involving structures of at least 1,000 square feet or estimated construction costs of at least \$200,000 shall submit as part of the WMP a diversion security deposit, in cash or by irrevocable letter of credit, in the amount of one percent (1%) of the total costs for the project or \$500, whichever is greater. The deposit shall be returned, without interest, in total or in proportion, upon the WMP compliance official's determination, in accordance with Section 15.48.040 that the applicant has satisfied, or failed to satisfy, the diversion requirement approved as part of the WMP. For the purposes of this Section, the value of the Project shall be as determined by the City's Building Official or designee in connection with permit issuance. The square footage and valuation thresholds established by this Section may be adjusted every five (5) years by the City Manager or his/her designee to reflect an increase or decrease in the cost of construction due to inflation or deflation, or other changes in the local construction marketplace.

#### **15.48.030 Diversion Exemption.**

- A. **Application.** If an applicant for a covered project believes that circumstances exist which make it infeasible to comply with the diversion requirement, the applicant may apply for an exemption at the time that he or she submits the WMP as required by section 15.48.020 of this chapter. The applicant shall state on the WMP form the

maximum rate of diversion the applicant believes is feasible for each type of C&D debris material and the specific circumstances why the applicant believes it is infeasible to comply with the diversion requirement.

- B. **WMP Compliance Official Review.** The WMP compliance official shall review the information supplied by the applicant and may meet with the applicant to discuss possible ways of meeting the diversion requirement. Based on the information supplied by the applicant, the official shall determine whether it is possible for the applicant to meet the diversion requirement.
- C. **Granting the Exemption.** If the WMP compliance official determines that it is infeasible for the applicant to meet the diversion requirement, the official shall put the reasons for this determination in writing based on the criteria contained in subsection "E" below. The WMP compliance official shall determine the maximum feasible diversion rate for each C&D debris material and shall indicate this rate on the WMP application submitted by the applicant. The official shall then determine the diversion rate which will be applicable for the project. The official shall return a copy of the WMP application to the applicant marked "Approved for Infeasibility Exemption" and shall notify the building department that the WMP has been approved provided that the applicant has posted the required diversion security deposit.
- D. **Denial of Exemption.** If the WMP compliance official determines that it is possible for the applicant to meet the 65 percent (or other percentage as stipulated by CalGreen) diversion requirement specified in Section 15.48.010, the official shall state the reasons therefore in writing based on the criteria contained in subsection "E" below. The applicant shall have 30 days to resubmit a WMP application that complies with Section 15.48.010. If the applicant fails to resubmit the WMP, or if the resubmitted WMP does not satisfy the requirements of Section 15.48.020(B), the official shall deny the WMP in accordance with Section 15.48.030(D). An extension may be requested for a fixed period of time.
- E. **Criteria.** In determining whether to approve or deny an application for an exemption from the diversion requirement, the WMP compliance official shall base his or her written determination on the following criteria.
  - 1. The presence or absence of exceptional or extraordinary circumstances or conditions applicable to the project that do not apply to similar projects.
  - 2. A determination of whether the granting the exemption constitutes a grant of special privilege inconsistent with the limitations imposed on like projects.
  - 3. In determining whether to approve or deny an application for an exemption, the cost to the applicant of satisfying the diversion requirement shall not be the primary reason for granting an exemption although cost may be a factor in the official's determination of whether there are exceptional or extraordinary circumstances or conditions applicable to the project.

#### **15.48.035 Review of the Waste Management Plan (WMP).**

- A. **WMP Approval Required For Issuance of Construction Permits.** No building or demolition permit shall be issued or approved for any covered project unless and until the WMP has been approved.
- B. **WMP Approval.** A WMP shall be approved only if the official determines that the following conditions have been satisfied:
  - 1. The WMP form submitted by the applicant satisfies all of the requirements specified in Section 15.48.020 and the official has determined that the form is complete.
  - 2. The applicant demonstrates to the WMP Compliance Official's satisfaction, that at least 65% (or other percentage as stipulated by CalGreen) of the C&D debris for the covered project, or an alternative percentage approved by the official as part of the infeasibility exemption, will be diverted. WMP Compliance Official may request additional documentation of diversion or reuse as applicable as a part of this review.
  - 3. The applicant has posted the required diversion security deposit (if applicable).

#### **15.48.040 Determination of Compliance and Release of Diversion Security Deposit**

- A. **WMP Final Submission.** Within 30 days after the completion of construction for any covered project, the applicant shall submit to the WMP Compliance Official documentation that the applicant has met the diversion requirement for the project. This documentation shall include the following:
  - 1. A copy of the previously approved WMP for the project with actual material volume or weight generated by the project; and
  - 2. Receipts and/or disposal weight records from both disposal and recycling facilities and/or vendors that received each material showing whether the material was landfilled or recycled; and
  - 3. Any additional information that the applicant believes is relevant to determining its efforts to comply in good faith with this chapter.
  - 4. Any additional information requested by the WMP Compliance Official that is relevant to determining efforts to comply in good faith with this chapter.
- B. **Weighing of C&D Debris Materials.** Applicants shall make reasonable efforts to ensure that all C&D waste diverted or landfilled is measured and recorded using the most accurate method of measurement available. To the extent practical, all C&D debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D debris for which weighing is not practical due to small size or to other considerations,



a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates provided by the City for this purpose.

- C. **Determination of Compliance.** The WMP Compliance Official shall review the information submitted by the applicant and determine whether the applicant has complied with the diversion requirement.
- D. **Full Compliance.** If the official determines that the applicant has fully complied with the diversion requirement applicable to the project as contained in the approved WMP, the official shall release the full diversion security deposit to the applicant.
- E. **Less Than Full Compliance:** If the WMP compliance official finds that the applicant has not satisfied the diversion requirement for the project, the official shall calculate the applicant's percentage rate of compliance. The official shall then determine whether the applicant has made a good faith effort to comply with the diversion requirement. In making this determination, the official shall consider the availability of markets for the C&D debris, the size of the project, and the documented efforts of the applicant to divert the C&D debris. The official shall then authorize the release of some or all of the deposit to the applicant. At a minimum, the applicant shall be entitled to a release of that portion of the diversion security deposit which equals the applicant's percentage rate of compliance. Therefore, if the applicant has achieved sixty percent (60%) of the diversion requirement for the project, the official shall release at least 60 percent (60%) of the diversion security deposit. The official shall furnish the applicant in writing with the method by which the official calculated the applicant's percentage of compliance and the reasons for the official's determination of the amount of the deposit to be released to the applicant.
- F. **Failure to Submit Documentation.** If the applicant fails to submit the documentation required by Section 15.48.040(A) within the required time period of 30 days after the completion of a covered project, the entire diversion security deposit shall be deemed forfeited. The official shall inform the applicant in writing of the forfeiture of the deposit for failure to timely submit the required documentation. If the documentation is submitted after the required time period, but before the City has informed the applicant in writing, the official shall evaluate whether the applicant has complied with the diversion requirement for the project. However, ten percent (10%) of the deposit shall be deemed forfeited to the City because of the applicant's failure to submit the required documentation within the required time period.
- G. **Withdrawal of Building or Demolition Permit Application.** The WMP compliance official shall authorize the refund of the entire diversion security deposit if the building or demolition permit is withdrawn or cancelled before any work begins.
- H. **Use of Retained Diversion Security Deposits.** All diversion security deposit monies retained by the City shall be used only for the purpose of administering the program established through this chapter or for the purpose of promoting recycling within the City.

### 15.48.045 Appeals

- A. **Appeal to the City Manager or the City Manager's Designee.** An applicant shall have the right to appeal any decision or determination of the WMP compliance official to the City Manager or the City Manager's designee. The applicant must file a notice of appeal within 10 calendar days from the date of the official's decision or determination. The notice of appeal shall state the reasons for the appeal as well as all of the evidence and legal arguments upon which the applicant bases the appeal. The appeal must also be accompanied by the appeal fee established by resolution of the City Council. The City Manager or the City Manager's designee shall schedule the appeal for a hearing and provide the applicant at least five (5) days written notice of the time and place of the hearing. Within thirty (30) days of the conclusion of the hearing, the City Manager or the City Manager's designee shall inform the applicant in writing whether the decision or determination of the WMP Compliance Official shall be affirmed, denied or modified. The written determination by the City Manager or the City Manager's designee shall include the reasons for the determination.
- B. **Appeal to the City Council.** The applicant may appeal the determination of the City Manager or the City Manager's designee to the City Council by filing a written notice of appeal with the City Clerk within 10 days from the date of the City Manager's or the City Manager's designee's written determination. The notice of appeal shall be accompanied by the appeal fee established by City Council resolution. The notice of appeal shall also include all evidence and legal arguments which the applicant wishes the City Council and any reviewing court to consider. The City Clerk shall cause the appeal to be set for hearing before the City Council. The City Clerk shall provide the applicant with no less than 10 days written notice of the time and place of the hearing. The written determination of the City Council at the conclusion of the hearing shall be final.

### 15.48.050 Administrative Fee.

As a condition precedent to the issuance of any building or demolition permit for a covered project requiring a deposit, the applicant shall pay the City a fee, established by resolution of the City Council and equivalent to three compliance officer staff hours per the city's staff cost rate table, to compensate the City for staffing expenses incurred in administering this Chapter.

### 15.48.055 Enforcement

- A. **Public Nuisance.** Violation of any provision of this chapter shall constitute a public nuisance and be subject to abatement as provided by law.
- B. **Civil Action.** Violation of any provision of this chapter may also be enforced by any means available to the City, including, but not limited to, an action for injunctive relief.

In any civil action, administrative or judicial, the City shall be entitled to recover its attorney fees and costs from the defendant if it is determined that defendant violated this chapter.

- C. **Administrative Citations.** Violations of any provision of this chapter may also be enforced pursuant to Chapter 1.09 of this Code.
  
- D. **Cumulative Remedies.** The remedies under this chapter are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.