

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTER
8.08 RECYCLING AND DIVERSION OF WASTE FROM
CONSTRUCTION AND DEMOLITION OF THE DESERT HOT
SPRINGS MUNICIPAL CODE REGARDING SETTING THE
AMOUNT OF PERFORMANCE SECURITY BY RESOLUTION**

WHEREAS, pursuant to the police power granted to the City under the California constitution, the City Council of the City of Desert Hot Springs may adopt rules and regulations to serve and protect the health, safety and welfare of the public; and

WHEREAS, a City Council Subcommittee (the "Subcommittee") was appointed to review solid waste handling and diversion matters; and

WHEREAS, the Subcommittee reviewed Chapter 8.08 of the Desert Hot Springs Municipal Code (the "Municipal Code") and recommends certain changes as appropriate and necessary; and

WHEREAS, the City Council desires to incorporate the amendments to Chapter 8.08 of the Municipal Code recommended by the City Council Subcommittee.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. RECITALS

That the above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. AMENDMENT

That Chapter 8.08 (Recycling and Diversion of Waste from Construction and Demolition) or Title 8 (Health and Safety) of the Desert Hot Springs Municipal Code, relating to construction and demolition waste recycling and diversion, is hereby amended as follows:

**Chapter 8.08 RECYCLING AND DIVERSION OF WASTE FROM
CONSTRUCTION AND DEMOLITION**

8.08.010 Findings and purpose.

The City Council of the City of Desert Hot Springs finds and determines that the City is committed to protecting the public health, safety, welfare, and environment; that in order to meet these goals it is necessary that the City promote the reduction of solid waste and reduce the stream of solid waste going to landfills; that under California law as embodied in the California Waste Management Act (California Public Resources Code Sections 40000 et seq.), the City of Desert Hot Springs is required to prepare,

adopt, and implement source reduction and recycling elements to reach reduction goals, and is required to make substantial reductions in the volume of waste materials going to landfill, under the threat of penalties of \$10,000 per day, that waste from demolition and construction of commercial and residential buildings represents a large portion of the volume presently coming from the City of Desert Hot Springs, and that a percentage of that waste is particularly suitable for recycling; that the City of Desert Hot Springs commitment to the reduction of waste and to be in compliance with state law requires the establishment of programs for recycling and salvaging construction and demolition materials; the City Council recognizes that requiring demolition and construction waste to be recycled and reused may in some respects add modestly to the cost of demolition and construction and in other respects may make possible some cost recovery and cost reduction; and that it is necessary in order to protect the public health, safety, and welfare that the following regulations be adopted. (Prior code § 50.50)

8.08.020 Definitions.

As used in this chapter:

“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.

“City-owned projects” means construction, demolition, addition, alteration, and remodel projects that are City-owned and are not described by Section 8.08.050 as exemptions.

“Compliance Official” means person designated by the City to evaluate C & D waste plans, track project progress, and determine return and forfeiture of securities.

“Construction” means all building, landscaping, remodeling, addition, removal or destruction involving the use or disposal of designated recyclable and reusable materials as defined in Section 8.08.030.

“Construction and demolition waste” means and includes the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures. C & D waste includes the following items which meet the above criteria:

1. Components of the building or structure that is the subject of the construction work including, but not limited to, lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floorcoverings, window coverings, plastic pipe, concrete, fully cured asphalt, heating, ventilating, and air conditioning systems and their components, lighting fixtures, appliances, equipment, furnishings, and fixtures;

2. Tools and building materials consumed or partially consumed in the course of the construction work including material generated at construction trailers, such as blueprints, plans, and other similar wastes;

3. Cardboard and other packaging materials derived from materials installed in or applied to the building or structure or from tools and equipment used in the course of the construction work; and

4. Plant materials resulting from construction work when commingled with dirt, rock, inert debris or C & D waste.

“Construction and demolition waste plan” (C & D waste plan) means a completed C & D waste form, approved by the City for the purpose of compliance with this chapter, submitted by the applicant for any covered project.

“Contractor” means any person or entity holding, or required to hold, a contractor's license of any type under the laws of the state of California, or who performs (whether as contractor, subcontractor or owner-builder) any construction, demolition, remodeling, or landscaping relating to buildings or accessory structures in Desert Hot Springs.

“Conversion rate” means the rate set forth in the standardized conversion rate table approved by the City pursuant to this chapter for use in estimating the volume or weight of materials identified in a C & D waste plan.

“Covered projects” means all construction, demolition, addition, alteration, and remodel projects within the City requiring a building permit.

“Demolition” means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

“Divert” means redirection of material that would previously be disposed into the landfill. Appropriate diversion methods include transfer of materials to acceptable recycling facilities, approved on-site re-use techniques, and other waste minimization methods approved by the Compliance Official.

“Diversion requirement” means the diversion of at least 50 percent of the total construction and demolition waste generated by a project via reuse or recycling, unless the applicant has been granted an exemption pursuant to Section 8.08.050 of this chapter, in which case the diversion requirement shall be the maximum feasible diversion rate established by the Compliance Official.

“Exempt” means projects that are described by the criteria outlined in Section 8.08.080 are considered exempt.

“Large project” means projects that are 25 or more homes under a subdivision or a specific plan constructing 100,000 square feet or more.

“Mixed waste processing facility” means a recycling, composting, materials recovery or re-use facility for which the Compliance Official has issued a certification pursuant to regulations promulgated by the Compliance Official.

“Non-covered projects” means projects that are not described by the definition of “covered projects.”

“Performance security” means a letter of credit, certificate of deposit, or cash and cash equivalents submitted to the City/County pursuant to Section 8.08.080 of this chapter.

“Project” means a building or buildings covered under an individual permit.

“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 facility” means approved processing facility by City, County, state, or federal government.

“Renovation” means any change, addition, or modification to an existing structure.

“Residential standards” means standards that apply to the construction of residential development.

“Reuse” means further or repeated use of construction or demolition waste.

“Salvage” means the controlled removal of construction or demolition waste from a permitted building or demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse. (Prior code § 50.51)

8.08.030 Designated recyclable and reusable materials.

(Use Riverside County definition of nonhazardous and hazardous materials.)

Recyclable and reusable materials include, but are not limited to, the following:

- A. Appliances including, but not limited to stoves, refrigerators, water heaters, air conditioning, and lighting;
- B. Cardboard materials;
- C. Drywall and plaster materials including drywall, gypsum, and sheetrock;
- D. Green waste, which includes tree trimmings, grass, leaves, roots, and palm fronds;
- E. Masonry building materials including all products generally used in construction including, but not limited to, concrete, rock, stone, and brick;

F. Metals including ferrous (steel, stainless steel, steel piping, roofing, and flashing) and nonferrous (aluminum, copper, and brass);

G. Paving materials including asphalt, brick, and concrete;

H. Roofing materials including wood shingles as well as asphalt, stone, concrete, metal, and slate based roofing material;

I. Salvageable materials and structures including, but not limited to wallboard, doors, windows, fixtures, toilets, sinks, and bathtubs;

J. Wood waste includes any and all dimensional lumber, fencing or construction wood that is not chemically treated, creosoted, CCA pressure treated, contaminated or painted;

K. Any other construction or demolition debris that is nonhazardous and available for recycling or reuse, including dirt. (Prior code § 50.52)

8.08.040 Diversion requirements—Covered projects requirements.

A. Demolition. Every structure planned for demolition shall be made available for deconstruction, salvage, and recovery prior to demolition. It shall be the responsibility of the owner, the general contractor and all subcontractors to recover the maximum feasible amount of salvageable designated recyclable and reusable materials prior to demolition. Recovered and salvaged designated recyclable and reusable materials from the deconstruction phase shall qualify to be counted in meeting the diversion requirements of this chapter. Recovered or salvaged materials may be given or sold on the premises, or may be removed to a reuse warehouse facility for storage or sale.

B. New Construction. All covered projects must do the following:

1. Meet the diversion requirement of at least 50 percent of all construction waste;

2. Submit a construction and demolition waste plan (on the required forms);

3. Submit a performance security along with the application required for a construction permit. City-owned projects will not be required to pay the performance security.

C. Every applicant shall submit a properly completed “recycling and waste reduction form” as prescribed by the City’s Compliance Official, to the Building and Safety Department, as a portion of the building or demolition permit process. The form shall contain an accurate estimate of the tonnage or other specified units of construction and/or demolition waste to be generated from construction and demolition on the site. Approval of the form as complete and accurate shall be a condition precedent to issuance of any building or demolition permit. (Prior code § 50.53)

8.08.050 Diversion requirement exemptions.

A. Evaluation of the C & D waste plan may determine the following projects exempt:

1. Work for which a building or demolition permit is not required;
2. Roofing projects that do not include tear-off of existing roof;
3. Remodels, alterations, or additions with total area less than 500 square feet;
4. Work for which only a plumbing, only an electrical, or only a mechanical permit is required
5. Seismic tie-down projects;
6. Installation of pre-fabricated patio enclosures or accessories such as signs or antennas where no structural building modifications are required;
7. Projects where no structural building modifications are required;
8. Emergency demolition that is required to protect the public health and safety; and
9. Other projects that the Compliance Official determines infeasible to comply with the diversion requirement.

B. The Compliance Official shall determine if the construction project is in compliance with this section. While not required, it shall be encouraged, that at least 50 percent of all project-related construction and demolition waste from exempt projects be diverted. The Compliance Official shall distribute education materials that encourage recycling of construction and demolition waste. (Prior code § 50.54)

8.08.060 Mixed waste processing facilities.

A. The Compliance Official shall issue a certification only if the owner or operator of the facility submits documentation satisfactory to the Compliance Official:

1. That the facility has obtained all applicable federal, state, and local permits, and is in full compliance with all applicable regulations; and
2. The mixed waste facility shall determine amount of material landfilled versus diverted and provide Compliance Official with tonnage diverted on receipts.

B. The City shall make available to each building permit applicant paying a performance security a current list of mixed waste processing facilities. (Prior code § 50.55)

8.08.070 Construction and demolition waste plan.

A. In conjunction with the building permit applications fee, the applicant shall submit a properly completed C & D waste plan to the Compliance Official in a form as prescribed by that Official, for one or more building permits issued at the same time. The completed C & D waste plan shall contain the following:

1. The estimated volume or weight of construction and demolition waste that will be disposed;
2. The estimated weight of such materials that can feasibly be diverted via reuse or recycling by material type;
3. The vendor(s) that the applicant proposes to use to service the cleanup activities and the markets identified that will be used in recycling or reusing the diverted materials.

Because actual material weights are not available in this stage, estimates are used. In estimating the volume or weight of materials as identified in the C & D waste plan, the applicant shall use the standardized conversion rates approved by the City of Desert Hot Springs for this purpose. Approval of the C & D waste plan as complete and accurate shall be a condition precedent to the issuance of any building or demolition permit. If the applicant calculates the projected feasible diversion rate as described above, and find the rate does not meet the diversion goal, the applicant must then submit information supporting the lower diversion rate. If this documentation is not included, the C & D waste plan shall be deemed incomplete.

B. Evaluation of the C & D waste plan will determine the following:

1. Approval. No building or demolition permit shall be issued for any covered project unless and until the Compliance Official has approved the C & D waste plan. The Compliance Official shall only approve a C & D waste plan if he or she determines that all of the following conditions have been met:

- a. The C & D waste plan provides all of the information set forth in this section;
- b. The C & D waste plan indicates that the diversion requirements of Section 8.08.040 are met; and
- c. The applicant has submitted an appropriate performance security for the project.

2. Non-Approval. If the Compliance Official determines that the C & D waste plan is incomplete or fails to indicate that the diversion requirements of Section 8.08.040 will be met, he or she shall either:

a. Return the C & D waste plan to the applicant marked "Disapproved," including a statement of reasons, and will notify the building department, which shall then immediately stop processing the building or demolition permit application, or

b. Return the C & D waste plan to the applicant marked "Further Explanation Required." (Prior code § 50.56)

8.08.080 Performance security.

A. The applicant for a building or demolition permit shall submit a performance security along with the C & D waste plan. This performance security shall be in the amount ~~of one percent of the building permit valuation, but not greater than \$75,000~~ **established by resolution of the City Council.**

~~B. For large projects, a \$75,000 performance security will be deposited. The security may be carried forward to the following phase provided the contractor has met the required diversion requirements. If diversion requirements are not met and a portion or all of the performance security is forfeited, the security must be replenished to meet \$75,000. The dollar amount to be replenished will be based on the diversion schedule in Section 8.08.130.~~

CB. The applicant shall post performance security in the form of cash, money order, letter of credit, performance or surety bond. (Prior code § 50.57)

8.08.090 Refund of performance security.

A. The Compliance Official may authorize the refund of any performance security, which was erroneously paid or collected.

B. The Compliance Official may authorize the refund of any performance security when the building permit application is withdrawn or cancelled before any work has begun.

C. The performance security shall be returned, without interest, in total or pro-rated, upon proof of satisfaction by the Compliance Official that no less than the required percentage of construction and demolition waste tonnage generated by the covered project has been diverted from disposal and has been recycled or reused. If a lesser percentage of construction and demolition waste tonnage than is required is diverted, a proportionate share of the deposit shall be returned. The deposit shall be forfeited entirely or to the pro-rated extent that there is a failure to comply with the requirements of this chapter. The City may, by formal resolution, modify the amount of the required security. (Prior code § 50.58)

8.08.100 Use of performance security.

Moneys received by the City as performance security shall be used only for:

A. Payment of performance security refunds;

B. Programs to divert construction, demolition, and alteration projects from the landfill;

C. Programs whose purpose is to develop or improve the infrastructure needed to divert wastes from construction, demolition, and alteration projects from landfill disposal;

D. Allocated staff costs. (Prior code § 50.59)

8.08.110 Reporting.

A. To the extent practical, all construction and demolition waste shall be weighed in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition waste for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates approved by the City for this purpose.

B. Throughout the duration of the project the applicant is required to submit documentation to the Compliance Official that proves compliance with the requirements of Sections 8.08.040 and 8.08.070. The documentation shall consist of monthly updates showing waste tonnage data, total tonnage, tonnage diverted, and tonnage landfilled 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. Receipts and weight tags will be used to verify whether waste generated from the covered project has been or is being 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. If the applicant fails to complete this requirement, the Building Inspector or Compliance Official will consider placing a stop work order on project covered project to ensure compliance of this section.

C. Within 60 days following the completion of the demolition of a covered project (if applicable), and again within 60 days following the final inspection of the project, the applicant shall submit documentation to the Compliance Official that proves compliance with the requirements of Sections 8.08.040 and 8.08.070. The documentation shall consist of a final completed C & D waste plan 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. Receipts and weight tags will be used to verify whether waste generated from the covered project has been or are to 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. If the applicant fails to comply with this requirement, the performance security will be forfeited. (Prior code § 50.60)

8.08.120 Forfeiture of performance security.

A. If the Compliance Official 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 Sections 8.08.070, 8.08.110, and 8.08.130 within the 60-day time period, then the deposit shall be forfeited to the City.

B. If it has been determined through the monthly progress of submitted documentation that the project is failing to meet the criteria of Section 8.08.040, the City reserves the right to hire appropriate assistance necessary for the project to achieve compliance. If this occurs, the applicant will be held liable for the costs associated with compliance.

C. If the Compliance Official determines that the applicant has diverted a lesser percentage of construction and demolition waste tonnage than required, the deposit shall be forfeited entirely or to the pro-rated extent that there is failure of compliance. (Prior code § 50.61)

8.08.130 Compliance and release of performance security.

The Compliance Official shall review the information submitted under Section 8.08.110 of this chapter and determine whether the applicant has complied with the diversion requirement as follows:

A. Full Compliance. If the Compliance Official determines that the applicant has fully complied with the diversion requirement applicable to the project, the Compliance Official shall cause the performance security to be refunded in full, without interest, within 15 days.

B. Partial Compliance. If the contractor is not found in compliance but has submitted required forms and documentation, the City may refund a percentage of the deposit for partial compliance. See schedule below to determine the amount of the security to be refunded based on the level of diversion obtained and supported.

Percent Diverted	Percent Deposit Returned
50%	100%
40—49%	80%
30—39%	60%
20—29%	40%
10—19%	20%
Under 10%	0%

C. Noncompliance. If the Compliance Official determines that the applicant has not fully or partially complied with the diversion requirement, or if the applicant fails to submit the documentation required by Section 8.08.110 within the 60-day time period, then the performance security shall be forfeited to the City. (Prior code § 50.62)

8.08.140 Appeal—Administrative appeal.

A. The applicant shall have the right to appeal to the City Manager or designee, any decision made by the Compliance Official.

B. The decision made by the City Manager or designee shall be final. (Prior code § 50.63)

8.08.150 Option to revise.

Annually, the City will evaluate this chapter to determine its effectiveness in reducing the amount of C & D waste disposed. In this determination, the City will consider issues such as the amount of C & D waste disposed, volume of C & D activity, markets for C & D waste, and other barriers encountered by applicants. If the City determines the C & D disposed had the potential for diversion, then the City may amend these provisions and implement the necessary measures to divert more C & D waste. (Prior code § 50.64)

8.08.160 Violations a public nuisance.

Refer to Chapter 4.16 of the City of Desert Hot Springs Municipal Code. (Prior code § 50.65)

8.08.170 Penalties.

Refer to Chapter 9.04 and Section 9.04.110, Penalty, of the City of Desert Hot Springs Municipal Code. (Prior code § 50.66)

8.08.180 Preferred construction and demolition hauler program.

A. Notwithstanding the foregoing, City hereby designates its franchised contractor to serve as its preferred hauler of construction and demolition waste for recycling and diversion.

B. An applicant may arrange exclusively with City's preferred hauler to remove construction and demolition waste for recycling or diversion from a project covered by this Article IV, with written evidence of said arrangement delivered to City, whereupon certain Chapter 8.08 requirements of applicant shall be waived: (1) Submittal of the C&D waste plan required by Section 8.08.070; (2) Posting of the performance security required by Section 8.08.080; and, (3) Reporting required by Section 8.08.110. In entering into an arrangement with City's preferred hauler to remove construction and demolition waste for recycling and diversion, applicant agrees to actively **and regularly** utilize City's preferred hauler's services during the entire period of demolition and/or construction on an as-needed basis, and abide by City's and City's preferred hauler's rules and regulations pertaining to the storage for removal of construction and demolition waste. **Self-hauling of construction and demolition waste shall not be permitted when requirements of Sections 8.08.070, 8.08.080 and 8.08.110 have been waived.**

C. City's preferred construction and demolition waste hauler shall report to City the recycling and diversion attributed to each applicant and each project.

D. Hauling services performed by City's preferred construction and demolition waste hauler shall be subject to the rates and charges established by the City.

Section 3. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 4. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 5. AMENDING OF BAIL SCHEDULE

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 6. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading.

Section 7. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 2nd day of September, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Adam Sanchez, Sr., Mayor

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

DRAFT