



SUMMARY OF AN ORDINANCE TO BE ADOPTED BY THE NEWARK CITY COUNCIL

NOTICE IS HEREBY GIVEN that the City Council of the City of Newark, at its City Council meeting of Thursday, May 25, 2023, at or near 7:00 p.m. in the Council Chambers, David W. Smith City Hall, 37101 Newark Boulevard, Newark, California, will consider the second reading and adoption of the following:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING CHAPTER 15.04, GENERAL PROVISIONS, AND AMENDING CHAPTER 15.44, GREEN BUILDING AND CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING OF THE NEWARK MUNICIPAL CODE TO MAKE ADMINISTRATIVE REVISIONS AND REVISIONS REGARDING CONSTRUCTION AND DEMOLITION WASTE DIVERSION REQUIREMENTS

Title 15 of the Newark Municipal Code includes the adoption of the current California Building Code and the California Green Buildings Standards Code. The City requires revisions to the General Provisions to reflect appropriate practices.

The General Provisions and Green Building and Construction and Demolition Debris Recycling Construction and Demolition Waste Diversion standards in Chapters 15.04 and 15.44 of the Newark Municipal Code require updates.

The City is not able to effectively implement the California Green Buildings Standards Code regarding construction and demolition debris diversion requirements, and amendments to the City's Municipal Code are now necessary to ensure diversion requirements can be enforced.

The proposed ordinance is available for public inspection on the City website at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes>, or in the Office of the City Clerk, David W. Smith City Hall, 37101 Newark Boulevard, Newark, California, during regular business hours on weekdays. All interested parties may attend the meeting and be heard.

SHEILA HARRINGTON
City Clerk

Publication: The Tri City Voice, May 16, 2023



ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK AMENDING CHAPTER 15.04, GENERAL PROVISIONS, AND AMENDING
CHAPTER 15.44, GREEN BUILDING AND CONSTRUCTION AND DEMOLITION
DEBRIS RECYCLING OF THE NEWARK MUNICIPAL CODE TO MAKE
ADMINISTRATIVE REVISIONS AND REVISIONS REGARDING CONSTRUCTION
AND DEMOLITION WASTE DIVERSION REQUIREMENTS**

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the State Department of Resources, Recycling and Recovery estimates that construction and demolition debris account for between 21.7 to 25.5 percent of the disposed waste stream; and

WHEREAS, diverting construction and demolition debris from landfills has played a major role in the City's process to achieve and maintain the State-mandated waste diversion goals; and

WHEREAS, Title 15 of the Newark Municipal Code includes the adoption of the current California Building Code and the California Green Buildings Standards Code; and

WHEREAS, the City requires revisions to the General Provisions requires revisions to reflect appropriate practices; and

WHEREAS, the General Provisions and Green Building and Construction and Demolition Debris Recycling Construction and Demolition Waste Diversion standards in Chapters 15.04 and 15.44 of the Newark Municipal Code require updates; and

WHEREAS, the City is not able to effectively implement the California Green Buildings Standards Code regarding construction and demolition debris diversion requirements, and amendments to the City's Municipal Code are now necessary to ensure diversion requirements can be enforced.

THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Amendments.

The City Council hereby approves the amendments to the Municipal Code, more specifically, amending Chapter 15.04 and Chapter 15.44, as shown with revisions in redline in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hour

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 4. CEQA.

Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions that do not authorize any new activity, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. Publication and effective date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

Chapter 15.04 - GENERAL PROVISIONS*

15.04.010 - Short title.

Chapters 15.04-02 through 15.28 of this title shall be known as the "city of Newark building regulations ordinance," may be cited as such, and will be referred to herein as this article.

15.04.020 - Definitions.

Whenever any of the names or terms defined in this section are used in this article or the codes adopted in this article by reference, each such term or name shall have the meaning ascribed to it in this section:

- A. "Administrative authority" used in reference to all the construction codes except the California Fire Code means the city building official. The "Administrative Authority" used in reference to the California Fire Code means the Alameda County Fire Department fire marshal.
- B. "City" means the city of Newark.
- C. "Director of emergency services" means the city manager, or successor, during a declared local emergency, who manages and coordinates emergency operations.
- D. "Construction codes" means the California Building Code, California Electrical Code, California Residential Code, and California Fire Code, published by the International Code Council and amended and adopted by the state of California; California Referenced Standards Code, California Historical Code, California Energy Code, California Green Building Standards Code, and California Building Standards Code, published by the State of California; California Plumbing Code and California Mechanical Code published by the International Association of Plumbing and Mechanical Officials and amended and adopted by the state of California.
- E. All other names or terms shall apply to the appropriate officer, board or body of the city.

15.04.030 - Interpretation of the ~~uniform~~-Construction codes and board of appeals.

The building official shall have the power to render interpretations of all construction codes, except for the California Fire Code, and to adopt and enforce rules and supplemental regulations to clarify the applications of their provisions. The fire marshal shall have the power to render interpretations of the California Fire Code and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of the construction codes.

In order to hear and decide appeals of orders, decisions or determinations made by the building official or fire marshal relative to the application and interpretation of the construction codes, there shall be and is hereby created a board of appeals consisting of five members who are qualified by experience and training to pass on matters pertaining to building construction and/or fire safety and who are not employees of the jurisdiction. The building official and the fire marshal shall be ex-officio members of and shall act as secretaries to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the city council and shall hold offices at its pleasure. The board shall adopt rules of procedure for conducting its

business, and shall render all decisions and findings in writing to the appellant with duplicate copies to the building official and fire marshal.

The board of appeals shall have no authority relative to interpretation of the administrative provisions of the construction codes nor shall the board be empowered to waive requirements of the construction codes.

15.04.040 - Enforcement authority—Right of entry.

A. The administrative authority is authorized and directed to enforce all the provisions of this article. For such purpose he or she shall have the powers of a police officer. The determinations of value or valuation under any of the provisions of this article shall be made by the administrative authority.

B. In accordance with Chapter 2.28 of the Newark Municipal Code, and with the approval of the chief appointing authority, the administrative authority may deputize such employees as may be authorized to carry out the provisions of this article.

C. Upon presentation of proper credentials, the administrative authority or his or her authorized representatives may enter at reasonable times any building, structure, or other premises in the city to perform any duty imposed upon him or her by this article.

15.04.050 - Liability.

A. The administrative authority, member of the board of appeals, or employee charged with the enforcement of the construction codes, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by the construction codes or other pertinent law or ordinance, shall be hereby rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provision of the construction codes shall be defended by legal representative of the city until the final termination of the proceedings. The administrative authority or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of the construction codes.

B. This article imposes no liability or responsibility upon the city for damages resulting from defective construction or work, nor shall the city or any official or employee thereof be held as assuming any liability or responsibility by reason of the duties carried out in enforcing the provisions of this article.

15.04.060 - Permits.

A. Permits Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing

system, the installation of which is regulated by the construction codes, or to cause any such work to be done, shall first make application to the administrative authority and obtain the required permit.

B. Work Exempt from Permit. Exemptions from permit requirements of the construction codes shall not be deemed to grant authorization for any work to be done in any manner in violation of the provision of the construction codes or any other laws or ordinances of [the] city. Permits shall not be required as delineated in the various adopted construction codes as work exempt from permits.

15.04.070 - Inspections.

A. General. Construction or work for which a permit is required shall be subject to inspection by the administrative authority and such construction or work shall remain accessible and exposed for inspection purposes until approved. If ladders, stairs, or other access features are needed for the administrative authority to gain access to construction in order to conduct inspections, they shall be provided by the permit applicant. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of construction codes or of other ordinances of the city. Inspections presuming to give authority to violate or cancel the provisions of the construction codes or of other ordinances of the city shall not be valid. It shall be the duty of the permit applicant to request inspections and to cause the work to remain accessible and exposed for inspection purposes. Neither the administrative authority nor the city shall be liable for expense entailed in the removal or replacement of any material required to allow inspections.

15.04.080 - Certificate of occupancy.

A. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the administrative authority has issued a certificate of occupancy. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the construction codes or city ordinance.

B. The building official or their designee is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permits, provided that such portion or portions shall be occupied safely and all fees due at time of the issuance of a certificate of occupancy are paid.

C. The building official or their designee is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of the construction codes wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of the construction codes.

15.04.090 - Service utilities.

- A. No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by the construction codes for which a permit is required, until released by the building official or their designee.
- B. The building official or their designee shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel, or power.
- C. The building official or their designee shall have the authority to authorize disconnection of utility service to the building, structure, or system regulated by the construction codes in case of emergency where necessary to eliminate an immediate hazard to like or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure, or service system, of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building, structure, or service system shall be notified in writing, as soon as practical thereafter.

15.04.100 - Stop work order.

- A. Whenever the building official finds any work regulated by the construction codes being performed in a manner either contrary to the provisions of the construction codes or dangerous or unsafe or deviates from the approved construction documents that is a life safety concern, the building official is authorized to issue a stop work order.
- B. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.
- C. Any person who shall continue any work after having been serviced with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to Chapter 15.28 of this title.

15.04.110 - Determination of construction valuation.

The determination of construction value or valuation under any of the provisions of the construction codes shall be made by the administrative authority. The value to be used in computing permit and plan review fees shall be the total of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems, ~~and~~ any other permanent equipment, and the cost of the design and documentation of the project.

15.04.120 Construction - documents.

~~Submitted Documents.~~ Construction documents, statement of special inspections, and other data shall be submitted ~~in two or more sets~~ with each permit application by the current process in effect. Construction documents shall be drawn upon suitable material and be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will

conform to the provisions of the construction codes and relevant laws, ordinances, rules, and regulations, as determined by the administrative authority. The administrative authority may waive the requirement of submitting construction documents for minor and/or simple projects.

15.04.130 - Permit fees.

The fees for permits authorizing work in accordance with the construction codes as adopted in this article shall be established by resolution of the city council and shall be paid prior to the issuance of such permits.

15.04.140 - Plan review fees.

When a plan or other data are required to be submitted in accordance with the provisions of the construction codes as adopted in this article, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fee is separate from and in addition to the permit fee. Said plan review fee shall be as established by resolution of the city council.

15.04.150 - Fee refunds.

Where an owner or applicant requests a fee refund in writing and the permit is not closed, finalized, or expired, the following criteria will be used to determine the refund amount.

- A. The administrative authority may authorize the refunding of certain fees paid under this article which are erroneously paid or collected.
- B. The administrative authority may authorize the refunding of not more than eighty percent of the permit fee paid when no work has been done under a permit issued in accordance with the uniform construction codes as adopted in this article.
- C. The administrative authority may authorize the refunding of not more than eighty percent of the plan review fee when the application for a permit, for which a plan review has been paid, is withdrawn or canceled before any plan review has begun. If a plan review was performed and then a permit is subsequently withdrawn, the refund for would be based on the amount any unused fee will be refunded based on the hourly rate of the reviewer not less than 1 hour.
- D. The administrative authority shall not authorize the refunding of any fee paid, except upon written request filed by the original permittee not later than one hundred eighty days after the date of payment of the fee.
- E. The application fee, document retention fee, records automation fee, building standards commission fee, and strong motion fee are nonrefundable.

15.04.160 - Reinspections.

- A. A reinspection fee may be assessed for each inspection or reinspection when the portion of work for which the inspection is scheduled is not complete or when required corrections have not been completed. This is not to be construed as requiring payment of a reinspection fee for the first-time first-time work that is rejected for failure to comply with the requirements of this code,

but as controlling the practice of requesting an inspection before the work is ready for such inspection and continued canceling of inspections within 24 hours.-

B. Reinspection fees may be assessed when the permit ~~card~~ is not properly posted or made conveniently available on the work site, the approved plans are not readily available to the inspector, for failure to provide access on the date for which the inspection is requested, or for deviating from the approved plans.

C. To obtain a reinspection, the applicant shall pay the reinspection fee as established by resolution of the city council and shall request a reinspection in the same manner as for a regular inspection.

D. In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

15.04.170 - Additional fees—Working without permit.

Whenever any work for which a permit is required by the construction codes as adopted in this article has ~~been~~ commenced without first obtaining said permit, the permit fee shall be double the amount set forth in the fee schedule resolution. This provision shall not apply to emergency work when the administrative authority determines that such work was urgently necessary and that it was not practical to obtain a permit ~~therefore~~ prior to the commencement of such work. In such cases, a permit shall be obtained as soon as it is practical to do so; and if there is an unreasonable delay in obtaining such permit, a double fee as provided in this section shall be charged.

15.04.180 - Expiration of plan review.

Applications for which no permit is issued within one hundred eighty days following the date of application or previous completed review cycle shall expire by limitation, and plans and other data submitted for review ~~may thereafter be returned to the applicant or destroyed~~ will be recorded as expired by the administrative authority. The administrative authority may extend the time for action by the applicant for a period not exceeding an additional one hundred eighty days upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken and there are no outstanding plan review fee's to be collected due. The administrative authority may deny an extension if any of the construction codes have been revised subsequent to the original date of application. The fee ~~for to extending~~ the plan review period shall ~~be fifteen percent of the initial plan review fee~~ be the administrative cost established by resolution of the city council. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay ~~a full~~ any new plan review fee based on the estimated cost of service.

15.04.190 - Expiration of permits.

A. Every permit issued by the administrative authority under the provisions of the construction codes as adopted in this article shall expire by limitation and become null and void if one or more of the following conditions occur:

1. The work authorized by such permit is not begun within one hundred eighty days or pursuant to state law from the date of issuance of such permit; or

2. The work authorized by such permit is suspended or abandoned for a period of one hundred eighty days or pursuant to state law at any time after the work has begun; or

3. A period of one hundred eighty days has elapsed since the most recent satisfactory inspection approval for the work authorized by such permit and is beyond the time allowed by either (1) or (2) above; or

4. The work authorized by such permit has not been completed and has not received final inspection approval within two years from the date of permit issuance.

B. Before such work can begin again, either the permit shall first be renewed, or a new permit shall first be obtained. The permit may be renewed; provided, no changes have been made or will be made to the original plans and specifications for such work; and provided further, that such suspension or abandonment or lapse of time since the most recent satisfactory inspection approval has not exceeded one year. A permittee may request renewal of a permit by submitting the request in writing (a) stating the reasons for the delay, (b) describing the circumstances beyond the control of the permittee which prevented the completion of the work, and (c) describing the relief being sought. The fee to renew a permit shall be ~~one-half the construction fee amount for the work based on the fee schedule in effect at the time of renewal of the permit~~ based on the amount of time needed to finish the project based on the fee schedule in effect at that time or the minimum permit fee amount, whichever is greater. The permit may be renewed only one time and for a period not to exceed 180 days from the date of renewal of the permit and not to exceed two and one-half years from the date of original permit issuance.

C. If the suspension or abandonment or lapse of time since the most recent satisfactory inspection approval exceeds one year, then a new permit shall first be obtained before commencing work. The permittee shall resubmit plans and supporting documents as for an original project submittal and shall pay new, full permit fees based on the fee schedule in effect at the time of issuance of the new permit. If construction codes were adopted subsequent to the application for the original permit, the building official shall require all new construction to meet current construction codes and may require previously completed construction to be modified to meet current construction codes.

D. A permittee holding an unexpired permit may request an extension of time to complete the work authorized by that permit by submitting the request in writing (1) stating the reasons for the delay, (2) describing the circumstances beyond the control of the permittee which prevented the completion of the work, and (3) describing the relief being sought. The fee to extend the permit shall be ~~fifteen percent of the construction fee amount for the work~~ the administrative costs to extend the permit, based on the fee schedule in effect at the time of extending the permit. ~~The permit may be extended only one time and for a period not exceeding one hundred eighty days and not to exceed two and one-half years from the date of original permit issuance.~~

15.04.200 - Findings.

The city council pursuant to Section 17958.7 of the state Health and Safety Code makes an express finding that the modifications and changes to the construction codes, as adopted in this article are necessary for the protection of the health, safety and general welfare of the residents of the city due to local climate or geological or topographical conditions.

15.04.210 - ~~Conflict in codes.~~

~~In case of conflict between the construction codes as amended and adopted in this article and those amended and adopted by the state, the more restrictive requirement shall apply.~~Reserved.

15.04.220 - ~~Article applicable to public corporations or bodies.~~——

~~The provisions of this article are specifically declared to govern and control the use and maintenance of any building or structure owned or controlled by any public, quasi-public, or political corporation or body.~~Reserved.

15.04.230 - Authority to inspect, post and enforce postings during an emergency.

During a declared local emergency precipitated by a natural or man-made disaster which may have resulted in physical damage to structures the director of emergency services, or his deputies, is given the authority enter onto private property, conduct inspections and post such property as "Inspected," "~~Limited Entry~~Restricted Use," or "Unsafe" and to enforce any conditions so stated on such posting.

15.04.240 - ~~Retention of plans.~~——

~~The administrative authority shall maintain an official copy of the plans of every building or structure, during the life of the building or structure, for which a permit was issued. Fees to cover the cost of reproduction shall be set by resolution by the city council.~~Reserved.

Chapter 15.44 - GREEN BUILDING AND CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING

15.44.010 - Title and purpose.

The ordinance codified in this chapter shall be known as the City of Newark "green building and construction and demolition recycling" ordinance. Green building is a whole systems approach to the design, construction, and operation of buildings that helps mitigate the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between natural and built environments and seek to minimize the use of energy, water, and other natural resources and provide a healthy, productive indoor environment. The purpose of the green building and construction and demolition debris recycling ordinance is to minimize or avoid a variety of adverse impacts by regulating the design, construction, and operation of buildings and landscaping.

15.44.020 - Definitions.

As used in this chapter:

- A. "City" means the City of Newark.
- B. "Construction" means the building of any facility or structure or any portion thereof, including any improvements, alterations, or additions to an existing facility or structure.
- C. "Construction and demolition debris" (C&D debris) means used or discarded materials generated and/or removed from residential, commercial, or industrial premises as a consequence of construction or demolition.
- D. "Covered project" shall have the meaning set forth in Section 15.44.040 of this chapter.
- E. "Demolition" means the deconstruction, destroying, razing, tearing down, or wrecking of any pavement, street, driveway, house, building, or other structure or improvement regardless of the nature of such structure or improvement whether in whole or in part, whether interior or exterior.
- F. "Divert" means to use material for any purpose other than disposal in a landfill or transformation facility.
- G. "LEED" means the Leadership in Energy and Environmental Design developed by the U.S. Green Building Council.
- H. "Project" means any activity involving construction, demolition, or renovation, and which requires issuance of a permit from the city.
- I. "Recycling" means the process of collecting, sorting, cleansing, treating, and/or reconstituting of 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.
- J. ~~"Traditional public works~~ City-Covered pP projects" means heavy construction projects such as pump stations, flood control improvements, roads, bridges, as well as traffic lights, sidewalks, bike paths, bus stops, street median projects, and associated infrastructure on city-owned and maintained property.
- K. "Transformation facility" means a facility that burns solid waste to produce heat or electricity.
- L. "Waste Management Plan Compliance Official" shall be the Public Works Director or their designee.
- ~~LM.~~ "Waste management plan" (WMP) means a completed form, approved by the city, for the purpose of compliance with this chapter, submitted by the applicant for any covered or noncovered project.

15.44.030 - Construction and demolition debris recycling.

All covered projects identified in [Section 15.44.040](#) shall ~~divert one hundred percent of all portland cement concrete and asphalt concrete and an average of no less than fifty percent of all remaining construction and/or demolition debris. Quantities shall be based upon weight unless volume is a more appropriate measurement. Exceptions to the minimum percentages of diverted material may be granted by the community development director provided the applicant can demonstrate that achieving a minimum required diversion rate is not feasible.~~ meet the mandatory construction waste management requirements in the most current version of the construction waste reduction, disposal and recycling sections of the California Green Building Standards Code.

15.44.040 - Covered projects subject to construction and demolition debris recycling.-

A. Covered Projects. Covered projects shall be any construction, addition, alteration, and demolition projects that are subject to the mandatory measures, in the most current version of the construction waste reduction, disposal and recycling sections of the California Green Building Standards Code.

B. City-Covered Projects. All Ceity construction, alteration, renovation, or demolition projects shall be subject to the nonresidential mandatory measures, found in the most current version of the construction waste reduction, disposal and recycling sections of the California Green Building Standards Code. Specific diversion requirements for city projects may also be reflected in the bid specifications by the city. ~~or privately owned construction projects whose total costs are greater than one hundred thousand dollars, or structure demolition projects whose total costs are greater than twenty thousand dollars, or pavement demolition projects involving over one thousand square feet of removed pavement, are covered projects subject to the requirements of [Section 15.44.030](#).~~

15.44.050 - Waste management plan.

A. When required by this chapter, applicants shall complete a waste management plan (WMP) on a form provided by the city which the community development director shall review and approve prior to the issuance of any permit associated with such WMP. At the conclusion of a project which required the submission of a WMP, the city shall review the completed WMP. Each WMP shall contain all of the following ~~information~~:

- ~~The address of the project and the applicant's name, business address, and phone number~~ The estimated type by weight and yardage of C&D debris that the project will generate; and
- The estimated type by volume-yardage or and weight of C&D debris to be diverted or not diverted, listed by each type of material ~~project construction and demolition debris for each type of recyclable material; and~~

~~3. The estimated maximum volume or weight of materials listed in "B" that can feasibly be diverted via reuse or recycling. The name of all haulers and/or facilities that the applicant proposes to use to collect or receive that material; and~~

~~4. The vendor or facility that the applicant proposes to use to collect or receive diverted material. Contact information for the applicant, the project address and permit number;~~

~~5. The estimated volume or weight of construction and demolition debris that will be landfilled;~~

~~6. The actual volume or weight of diverted material (provided prior to the completion of the project).~~

~~B. City-Covered Projects. The project manager or contractor of any city-covered project shall submit a properly completed waste management plan to the WMP compliance official within 10 business days of the notice to proceed, prior to or beginning any grading, encroachment, construction or demolition activities. Projects subject to Section 15.44.040 but not required to complete and follow a WMP shall comply with prescriptive recycling standards developed by the city. The city's prescriptive recycling standards shall include the following:~~

~~1. Descriptions of materials that can be recycled;~~

~~2. Names and locations of vendors and facilities that will receive recyclable materials;~~

~~3. Instructions that will assist applicants in complying with this chapter;~~

~~4. The minimum percentages of various materials that must be recycled.~~

~~C. All projects requiring development review and approval by the planning commission or city council and subject to Section 15.44.040 shall prepare a WMP and submit it to the city for review and approval. The city may require that applicants provide written documentation demonstrating compliance with the WMP approved for their respective project if not already required by a city council resolution. Deconstruction. In preparing the WMP, applicants for covered projects that involve the removal of all or part of an existing structure shall consider deconstruction, to the maximum extent feasible, and shall where feasible make the materials generated available for salvage and reuse prior to demolition.~~

~~D. All projects subject to Section 15.44.040, but not requiring review and approval by the planning commission or city council, shall, at their option, either prepare a WMP and submit it to the city for review and approval, or follow prescriptive recycling standards developed by the city. The city may require that applicants provide written documentation demonstrating compliance with the WMP approved for their respective project or the city prescriptive recycling standards.~~

~~15.44.060 - Green building practices for city buildings. Review of waste handling plan.~~

A. Compliance as a Condition of Approval. Compliance with the provisions of this articlechapter shall be listed as a condition of approval on any building or demolition permit for a covered project or city-covered project. Failure to include such a condition shall not relieve the applicant from compliance with this articlechapter. All city building projects with over five thousand square feet of new or added gross floor area and submitted for a building permit after the effective date of the ordinance codified in this chapter, shall be certified as meeting the Leadership in Energy and Environmental Design (LEED) "Silver" rating or a city-approved equivalent. Certification shall be performed by a LEED-accredited professional, the city architect, or the architect of record. The LEED "Silver" standards applicable under this chapter shall be those LEED "Silver" standards in effect on the effective date of the ordinance codified in this chapter, unless other LEED standards are selected by city council by resolution.

B. WMP Approval Required Prior to Permit Issuance. Notwithstanding any other provision of this code, no building, demolition or other similar permit shall be issued for any covered project unless, and until, the WHP compliance official has approved the WHP. Approval shall not be required, however, where an emergency demolition is required to protect public health or safety. All city building projects with five thousand square feet or less of new, altered, or added gross floor area and submitted for a building permit after June 24, 2007, shall be designed and constructed using as many green practices as appropriate and feasible.

C. Criteria for WMP Approval. The WMP compliance official shall only approve a WMP if he or she first determines that all of the following conditions have been met:

(1.) The WMP provides all of the information set forth in Section 15.44.050; and

(2.) The WMP indicates the diversion requirement will be achieved; and

(3.) The WMP indicates that the contractor will use either the franchised hauler debris box service or self-haul the construction and demolition debris to approved recycling facilities.

~~• Traditional public works projects are exempt from the standards and requirements of this chapter.~~

D. If the WMP compliance official determines that these conditions have been met, he or she shall mark the WMP "approved," return a copy of the WMP to the applicant which shall be incorporated into the construction drawings, and notify the building division that the WHP has been approved

E. WMP Disapproval. If the WMP compliance official determines that the WMP is incomplete or fails to indicate that the diversion requirements will be met, he or she shall:

(1.) Return the WMP to the applicant with a statement of reason for disapproval and a request to correct, add to or explain the information, and resubmit for approval.

F. A deposit shall be set at the time of approval of the WMP, and will be based on the valuation of the projects or current process in effect at that time.

15.44.070 Exception to diversion requirement.

A. Application. If an applicant for a covered project experiences unique circumstances that the applicant believes make it infeasible to comply with the diversion requirement, the applicant may apply for an exception at the time that he or she submits the WMP. The applicant shall indicate on the WMP the maximum rate of diversion 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.

B. Meeting With WMP Compliance Official. 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 WMP compliance official shall determine whether it is feasible for the applicant to meet the diversion requirement.

C. Granting of Exception. If the WMP compliance official determines that it is infeasible for the applicant to meet the diversion requirements, he or she shall determine the feasible diversion options, if any, for the project which shall then be incorporated into the WMP as the project diversion requirement. The WMP compliance official shall return a copy of the WMP to the applicant marked "approved for exception" and shall notify the building division that the WMP has been approved.

D. Denial of Exception. If the WMP compliance official determines that it is feasible for the applicant to meet the diversion requirement, he or she shall inform the applicant in writing. The applicant shall have 10 business days to resubmit a WMP form in full compliance with Section 15.44.050. If the applicant fails to timely resubmit the WMP, or if the resubmitted WMP does not comply with Section 15.44.050, the WMP compliance official shall disapprove the WMP in accordance with Section 15.44.060

15.44.080 Compliance with the diversion requirement.

A. Documentation. After the completion of any covered project or city-covered project, and as a precondition to issuance of a temporary or final certificate of occupancy by the city, the applicant shall submit to the WMP compliance official documentation that it has met the project diversion requirement as set forth in the WMP. This documentation shall include all of the following:

1. Contact information for the applicant or contractor, the project name, address and permit number(s);

2. A debris disposal and diversion report summary listing the total volume or weight generated by the project, actual volume or weight of C&D debris that was diverted by type of material and diversion method, and the actual volume or weight of C&D debris that was landfilled and not diverted; and

3. Receipts from the approved haulers or facilities which collected or received project C&D debris showing the actual weight or volume of each material, and/or detail reports from the approved facility or vendor that generally match the same materials identified on the WHP; and within the date range that the permit was active; and

4. To count toward meeting the diversion requirement, the documentation (receipts or detail reports) must include:

a. Receipts/weight tags from approved haulers or approved recycling facilities;

b. The City of Newark officially listed as the city of origin;

c. All of the materials generated by the project, including materials generated and hauled by subcontractors; and

d. Receipts/weight tags that were generated within the date range that the permit was active with permit number indicated.

5. Any additional information the applicant believes is relevant to determining its efforts to comply in good faith with this [article](#) chapter.

B. Weighing of Wastes. Applicants shall make reasonable efforts to ensure that all C&D debris diverted or placed in a landfill are 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 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.

C. Determination of Compliance. The WMP compliance official shall review the information submitted under subsection [A.\(a\)](#) of this section and determine whether the applicant has complied with the project diversion requirement, as follows:

1. Full Compliance. If the WMP compliance official determines that the applicant has fully complied with the project diversion requirement, he or she shall consider the requirement fulfilled.

2. Good Faith Effort to Comply. If the WMP compliance official determines that the project 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. In making this determination, the WMP compliance official shall consider any relevant information provided by the applicant regarding the availability of markets for the C&D debris that was not diverted, the size of the project, and the documented efforts of the applicant to divert C&D debris. If the WMP compliance official determines that the applicant has made a good faith effort to comply with this article, he or she shall consider the project diversion requirement fulfilled.

3. Noncompliance. If the WMP compliance official determines that the applicant has not made a good faith effort to comply with the project diversion requirements, the applicant shall be in violation of this article and shall be subject to a reduction in returned deposit, commensurate with the ratio of noncompliance.

15.44.090 Appeals.

An applicant may appeal a determination made by the WMP compliance official under this article chapter to the city manager or person designated by the city manager to hear such appeals. To appeal, the applicant shall file a written appeal with the city clerk within 10 business days after the determination of the WMP compliance official, stating the reasons for the appeal. An appeal is limited to the following issues: (a) the granting or denial of an exception to the diversion requirements; and (b) whether the applicant has made a good faith effort to comply with the project diversion requirements. The city manager or designee shall hear the appeal within 30 calendar days and shall give 10 calendar days' prior written notice to the applicant of the hearing date and time. Decisions of the city manager or designee shall be final, and the aggrieved party may seek relief from the decision only by complying with the requirements set forth in this section.

15.44.~~070~~100 - Voluntary green building practices for private buildings.

Developers of private property are encouraged to incorporate as many green practices as appropriate and feasible in buildings and structures constructed within the City of Newark, should the project strive for Tier 1 or Tier 2 CalGreen Standards the deposit required may be reduced.-

15.44.~~080~~110 - Bay friendly landscaping practices.

A. The city shall follow the City of Newark's Bay Friendly Landscape Guide whenever additions, renovations, or replacements are made to city-owned or controlled landscape areas.

B. All projects requiring development review and approval by the planning commission or city council and that involve landscaping shall follow the City of Newark's Bay Friendly Landscape Guide in the design of landscaped areas.

C. Landscapers of private property not otherwise required to follow the City of Newark's Bay Friendly Landscape Guide are encouraged to incorporate as many ~~B~~bay ~~f~~riendly landscape practices as appropriate and feasible in projects involving additions, renovations, or replacements in landscaped areas.

15.44.~~090~~120 - Incorporating green features in updates to the general plan and area specific plans.

Environmentally friendly community design concepts shall be encouraged when updating the general plan and area specific plans.

15.44.~~100~~130 - Environmentally preferable purchasing.

A. It is the policy of the City of Newark to institute practices that reduce waste by increasing product efficiency and effectiveness; purchase products that minimize environmental impacts, toxics, pollution, and hazards to worker and community safety to the greatest extent practicable; and purchase products that include recycled content, are durable and long-lasting, conserve energy and water, use agricultural fibers and residues, reduce greenhouse gas emissions, use unbleached or chlorine free manufacturing processes, are lead-free and mercury-free, and use wood from sustainably harvested forests.

B. The city shall follow the City of Newark Environmentally Preferable Purchasing Policy ~~Handbook~~ when making purchases for products for use by the city.

15.44.~~110~~140 - Violations.

A violation of this chapter is deemed an infraction.