

**ORDINANCE NO. 1056**

**AN ORDINANCE OF THE CITY OF FOLSOM ADDING CHAPTER 8.30 TO TITLE 8 OF THE FOLSOM MUNICIPAL CODE CONCERNING THE COLLECTION, RECYCLING AND DISPOSAL OF WASTE GENERATED FROM CONSTRUCTION, DEMOLITION AND RENOVATION PROJECTS**

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

**SECTION 1 PURPOSE**

The purpose of this ordinance is to add Chapter 8.30 to Title 8, of the Folsom Municipal Code (the "Code") pertaining to the collection, transportation, recycling and disposal of Construction and Demolition ("C&D") debris generated from construction, demolition, and renovation projects within the City of Folsom. Chapter 8.30 will align the Code requirements with current and future services to be provided by the Utilities Department.

**SECTION 2**

Chapter 8.30 of the Folsom Municipal Code is hereby added to read as follows:

Chapter 8.30

**COLLECTION, RECYCLING, AND DISPOSAL OF WASTE GENERATED FROM CONSTRUCTION, DEMOLITION, AND RENOVATION PROJECTS.**

Sections:

- 8.30.020 Definitions
- 8.30.025 C&D Program Guidelines and Program Oversight
- 8.30.030 Threshold of Covered Projects
- 8.30.040 Exempt Collection or Transportation
- 8.30.050 Review of Waste Management Plan
- 8.30.060 Compliance with Waste Management Plan
- 8.30.070 Infeasibility Exemption
- 8.30.080 Applicant Fee
- 8.30.090 C&D Hauler Permit Requirement
- 8.30.100 Authority to Grant C&D Hauler Permit
- 8.30.110 Application for C&D Hauler Permit
- 8.30.120 Appeal Upon Denial of Award of a C&D Hauler Permit
- 8.30.130 Awarding of C&D Hauler Permit
- 8.30.140 C&D Hauler Fee
- 8.30.150 Termination or Suspension of C&D Hauler Permit
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- 8.30.170 C&D Hauler Reporting Requirements
- 8.30.180 C&D Hauler Diversion Plans
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8.30.300	C&D Debris Ownership
8.30.310	Covered Load Requirement
8.30.320	Civil Penalties for Violations
8.30.020	Definitions

A. **“AB 939”** means the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 et seq., as amended.

B. **“Applicant”** means any natural person, business, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever who applies to the City for the applicable permits to undertake any construction, demolition, or renovation project within the City.

C. **“C&D Debris”** means used or discarded materials resulting from Construction, Renovation, remodeling, repair or demolition operations on any pavement, house, commercial building, or other structure and such other materials as may be removed during the normal cleanup process of such construction, renovation, remodeling, repair, or demolition operations.

D. **“C&D Hauler”** means the current list of permitted C&D haulers that have been issued a C&D Hauler Permit by the City authorizing the hauler to provide C&D debris services in the City.

E. **“C&D Hauler Permit”** means a Construction and Demolition Hauler Permit issued under the provisions of this Chapter authorizing the applicant to engage in the business of collecting, removing and transporting C&D debris generated within the City.

F. **“C&D Program Guidelines”** means the program guidelines developed, maintained, and managed by the City Utilities Director pursuant to this Chapter.

G. **“City”** means the City of Folsom, CA.

H. **“Construction”** means the building of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.

I. **“Covered Project”** means any Project that exceeds the established valuation threshold subjecting the project to this Chapter. The threshold for a covered project shall be established by the City Utilities Director and specified in the C&D Program Guidelines.

J. **“Deconstruction”** means the process of carefully dismantling a building or structure in order to salvage components for reuse and recycling.

K. **“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.

L. **“Director”** means the City of Folsom Utilities Department Director or his/her designees.

M. **“Divert”** means to use material for any purpose other than disposal in a landfill or transformation facility.

N. **“Diversion Plan”** means the plan submitted by applicants for a C&D Hauler Permit that identifies the diversion facility(s), strategy(s), and/or program(s) that will be used to divert C&D debris collected in the City in compliance with the diversion requirement.

O. **“Diversion Requirement”** means the diversion of a minimum proportion by weight of the C&D debris generated by a project via reuse or recycling, unless the applicant has been granted an infeasibility exemption pursuant to this Chapter, in which case the diversion requirement shall be the maximum feasible diversion rate established by the Director for the project. The diversion requirement shall be specified in the C&D Program Guidelines.

P. **“Person”** means any natural person, business, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever.

Q. **“Project”** means any activity which requires a building permit or demolition permit from the City.

R. **“Recycler”** means a materials recovery facility (“MRF”) processing C&D debris that is operating under current and active permits from the County of Sacramento and/or other applicable regulatory authorities, and that is achieving verifiable diversion rates equal to or in excess of the diversion requirement as specified in the C&D Program Guidelines.

S. **“Recycle”** means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become C&D debris 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.

T. **“Reuse”** means further or repeated use of construction or demolition debris.

U. **“Renovation”** means any change, addition, or modification in an existing structure.

V. **“Total Cost”** means the total construction value of the project as calculated by the City using the City’s standard commercial and residential valuation procedures for a building or demolition permit.

W. **“Waste Management Plan”** means a completed waste management plan form, approved by the Director for the purpose of compliance with this Chapter, submitted by the applicant for any covered or non-covered project.

8.30.025 C&D Program Guidelines and Program Oversight

A. The Director is authorized to develop C&D Program Guidelines consistent with this Chapter, to administer the C&D program pursuant to this Chapter and the C&D Guidelines, and to modify C&D Program Guidelines.

B. The Director shall oversee the C&D Program, and each C&D hauler shall provide to the Director such information as the Director determines is reasonably necessary to facilitate effective administration of the C&D Hauler Permit under the provisions of this Chapter.

8.30.030 Threshold for Covered Projects

All construction, renovation and deconstruction projects within the City with a total cost equal to or in excess of the established threshold are subject to this Chapter. The threshold for Covered Projects shall be established by the Director and specified in the C&D Program Guidelines. In addition, all demolition Projects that require a demolition permit from the City are subject to this Chapter.

8.30.040 Exempt Collection or Transportation

The persons listed in Sections 8.30.040 A through C shall be authorized to organize, direct or sponsor the collection, removal or transportation of C&D debris within the City, or collect, remove or transport such C&D debris, without a C&D Hauler Permit, and shall be exempt from the provisions of this Chapter.

A. The United States, State of California, the City, any county, any special district, or any employee or member thereof when collecting or transporting C&D debris produced by operation of the public agency or entity;

B. The owner, operator, occupant or employee of a farm or ranch consisting of five acres or more, when transporting for off-site disposal C&D debris accumulated as a result of the operation of the farm or ranch;

C. A commercial gardener when collecting or transporting material consisting of the by-products of routine landscape maintenance services provided within the City limits. Landscape construction and installation activities and services shall not be exempt from this Chapter.

8.30.050 Review of Waste Management Plan

A. Each applicant for a covered or non-covered project shall receive a Waste Management Plan template from the City and select one of the following options for compliance with this Chapter:

Option 1. C&D Hauler Responsibility, or

Option 2. Applicant Responsibility.

B. The compliance options are summarized as follows:

1. Option 1 (C&D Hauler Responsibility) requires the applicant to provide proof of an agreement with one (1) permitted C&D hauler to collect, haul, dispose and recycle all C&D debris generated by the covered project. The selected C&D hauler has the sole responsibility for compliance with the diversion requirement as specified in the C&D Program Guidelines. If the applicant complies with the terms of the agreement between the applicant and the C&D hauler, the applicant shall have no further obligations under this Chapter.

Under Option 1, the applicant shall designate a C&D hauler in the Waste Management Plan from a list provided by the City. The applicant shall also submit proof of an executed agreement with the selected C&D hauler to the City. The Waste Management Plan shall indicate the applicant name, the address of the covered project, and the permit number of the covered project. The Director shall review and approve the Waste Management Plan and the executed agreement prior to the issuance of a building or demolition permit.

2. Option 2 (Applicant Responsibility) places the entire responsibility for compliance with this Chapter on the applicant. The applicant may use any combination of C&D haulers or other means to collect, transport, dispose and recycle C&D debris generated from the covered project. The applicant must maintain and submit detailed weight and/or volume records to the Director to demonstrate compliance with the diversion requirement as specified in the C&D Program Guidelines.

Under Option 2, the Applicant shall submit a Waste Management Plan on a template provided by the City, as part of the application packet for a building or demolition permit within the City. The completed Waste Management Plan shall include the following information:

- a. The estimated volume or weight of C&D debris, by material type, to be generated by the covered project;
- b. The estimated volume or weight of such C&D debris that can feasibly be diverted via Reuse by the covered project;
- c. The estimated volume or weight of such C&D debris that can feasibly be diverted via recycling by the covered project;
- d. The recycler and/or facility(s) that the applicant proposes to use to receive said C&D debris; and
- e. The estimated volume or weight of C&D debris that will be land filled.

3. Option 2 Approval. Notwithstanding any other provision of this Chapter, when an applicant elects Option 2, no application for a building or demolition permit shall be approved by the City for any covered project unless and until the Director has approved the Waste Management Plan. Approval shall not be required, however, where an emergency Demolition is required by the City to protect public health or safety, as determined by the Director. The Director shall only approve a Waste Management Plan if he or she first determines that all of the following conditions have been met:

a. The Waste Management Plan provides all of the information set forth in this Chapter; and

b. The Waste Management Plan satisfactorily demonstrates the methods by which the diversion requirement will be met.

If the Director determines that all of the conditions set forth in this Section have been met, he or she shall approve the Waste Management Plan, return one copy of the approved Waste Management Plan to the applicant and return one copy to the City.

4. Option 2 Disapproval. For any applicant that elects Option 2, if the Director determines that the Waste Management Plan is incomplete or fails to satisfy the conditions for approval, the Director shall either:

a. Deny the Waste Management Plan, specifying the reasons for denial, and promptly notify the Neighborhood Services Department of the denial, which shall then immediately discontinue processing the plan check; or

b. Return the Waste Management Plan to the Applicant with a request for further information and promptly notify the Neighborhood Services Department of the request for further information which may, in its discretion, suspend or discontinue processing the plan check, depending on the circumstances and the request for further information.

#### 8.30.060 Compliance with Waste Management Plan

A. Option 1 Compliance. C&D Hauler Responsibility: Upon successful completion of the Waste Management Plan and the agreement between the Applicant and the C&D hauler, the applicant shall be deemed in compliance with the requirements of this Chapter. If for any reason the applicant prevents the C&D hauler from complying with the requirements of this Chapter, the applicant may be responsible for the diversion compliance fee as specified in this Chapter.

B. Option 2 Compliance. Applicant Responsibility:

1. Within thirty (30) days after the issuance of a certificate of occupancy, or at the time of issuing the last certificate of occupancy for units within a residential phased project of any covered project, the applicant shall submit to the Director the following documentation:

a. Receipts or weight tickets from the vendor(s) or facility(s) which collected or received each material generated from the covered project, showing the actual weight or volume of that material;

b. A copy of the previously approved Waste Management Plan for the covered project adding the actual volume or weight of each material diverted and landfilled; and

c. Any additional information requested by the Director and/or submitted by the applicant that is relevant to compliance with this Chapter.

2. Option 2 Weighing of C&D debris. Applicants shall make reasonable efforts to ensure that all C&D debris 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 certified 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 conversion rates approved by the Director for this purpose.

3. Option 2 Determination of Compliance. The Director shall review the information submitted as required in this Section and determine whether the applicant has complied with the diversion requirement, as follows:

a. Full Compliance. If the Director determines that the Applicant has fully complied with the diversion requirement applicable to the covered project, the Director shall submit a letter in writing to the applicant stating the determination of full compliance.

b. Good Faith Effort to Comply. If the Director determines that the diversion requirement has not been achieved, he or she shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with this Chapter. In making this determination, the Director shall consider the availability of markets for the C&D debris landfilled, the size of the covered project, and the documented efforts of the applicant to divert C&D debris. If the Director determines that the applicant has made a good faith effort to comply with this Chapter, the Director shall submit a letter in writing to the applicant stating the determination of a good faith effort to comply, in which case the applicant shall be released from further obligation under this Chapter.

c. Noncompliance. If the Director determines that the applicant has not complied with this Chapter, has not made a good faith effort to comply with this Chapter, or if the applicant fails to submit the documentation required by this Section, the Director will levy a diversion compliance fee in accordance with this Chapter. All fees collected pursuant to this Section shall be deposited into the City's solid waste fund.

#### 8.30.070 Infeasibility Exemption

If the Director determines upon review of the Waste Management Plan that it is infeasible for the applicant to meet the diversion requirement due to unusual and/or unique circumstances, he/she shall determine the maximum feasible diversion rate for each material and may approve a modified version of the Waste Management Plan. Upon completion of the covered project, the applicant shall submit documentation, as requested by the Director in his/her sole discretion, to demonstrate compliance with the approved Waste Management Plan.

#### 8.30.080 Applicant Fee

A. Option 1. C&D Hauler Responsibility: The applicant shall not be responsible for an applicant fee under Option 1.

B. Option 2. Applicant Responsibility: The applicant for a covered project shall be levied an applicant Fee. The applicant Fee shall be a proportion of the project valuation as stated in the application for a building permit, and shall be set by a resolution of the City Council.

8.30.090 C&D Hauler Permit Requirement

A. Option 1. C&D Hauler Responsibility: It is unlawful for any person designated by the applicant under Option 1 to engage in the business of collecting, transporting or disposing of C&D debris kept, accumulated or generated in the City unless a C&D Hauler Permit has first been granted pursuant to the provisions of this Chapter and such C&D Hauler Permit is in full force and effect.

B. Option 2. Applicant Responsibility: The applicant who elects Option 2 may use any combination of C&D haulers or other means to collect, haul, dispose and recycle C&D debris generated from the Covered project.

8.30.100 Authority to Grant C&D Hauler Permit

A. The Director is authorized to grant a C&D Hauler Permit to a qualified applicant authorizing the applicant to engage in the business of collecting, transporting or disposing of C&D debris kept, accumulated or generated in the City. Any grant of a C&D Hauler Permit by the Director may be subject to such terms, conditions, rules, regulations, restrictions, and limitations as the Director or his/her designee deems necessary to protect the public health, safety or welfare and consistent with this Chapter. The Director may deny an application for a C&D Hauler Permit if the Director finds that the application fails to meet the requirements of this Chapter and/or the Director finds that the issuance of the C&D Hauler Permit would impose an unreasonable risk to the health, safety, or general welfare of the public.

B. All C&D Hauler Permits shall be subject to the terms and conditions specified in this Chapter, and any other applicable Federal, State, or local laws and regulations.

C. Each C&D hauler shall provide C&D debris collection, removal, recycling, transportation and disposal services consistent with the provisions of this Chapter, the C&D Program Guidelines, and any applicable federal, state, or local statute, municipal code, rule or regulation.

D. The Director may at his/her sole discretion direct the City Solid Waste Division to remove any debris box or container within the City that is owned by a C&D hauler if the Director determines that the removal of the debris box or container is in the interest of the public health, safety and welfare.

8.30.110 Application for C&D Hauler Permit

A. All applications for C&D Hauler Permits pursuant to this Chapter shall be in writing and submitted by the applicant in a form specified by the Director. At a minimum, the application shall contain the following information:

1. Applicant identification;
2. Facilities and equipment of the applicant;



3. Diversion plans;
4. Notice that the application is subject to Folsom Police Department's review; and
5. Additional requirements as reasonably requested by the Director.

B. The application shall be signed by the person applying for the C&D Hauler Permit or, in the case of a partnership, corporation, or other business entity, by a person authorized to bind the partnership, corporation, or other business entity.

#### 8.30.120 Appeal Upon Denial of Award of a C&D Hauler Permit

A. Any person aggrieved by or dissatisfied with any decision or determination of the Director made pursuant to this Chapter shall have a right of appeal from that decision to the City Manager and thereafter to the City Council pursuant to Folsom Municipal Code Section 2.08.060, provided that any appeal from the City Manager's decision to the City Council pursuant to Section 2.08.060 must be filed with the City Clerk within fifteen (15) days of the decision of the City Manager.

B. The failure to file and prosecute all appeals available pursuant to the provisions provided herein shall be deemed a failure to exhaust administrative remedies, and shall act as a complete bar to any legal proceeding challenging the subject decision or determination.

#### 8.30.130 Awarding C&D Hauler Permit

A. A C&D Hauler Permit shall become effective upon issuance by the Director.

B. If the C&D Hauler's description of vehicles and/or equipment has changed between the application date and the effective date of the C&D Hauler Permit, the C&D hauler shall submit to the Director an amended description, including all identification elements required in this Chapter, prior to commencing services authorized in the C&D Hauler Permit.

#### 8.30.140 C&D Hauler Fee

All C&D haulers shall comply with the following C&D hauler fee requirements:

A. Option 1. C&D Hauler Responsibility:

1. Each person engaging in the business of collecting, transporting, recycling or disposing of C&D debris kept, accumulated or generated in the City under Option 1 shall pay a C&D hauler fee to the City. The C&D hauler fee shall be set by a resolution of the City Council.

2. C&D hauler fees shall be payable on a quarterly basis, or more frequently as determined by the Director, and shall be due and payable on the first day of the second month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this Chapter and the C&D fee resolution of the City Council.

3. The C&D hauler fee shall be submitted to the Director. Each payment shall be accompanied by a written statement, verified by the C&D hauler or its authorized agent, showing the calculation of the C&D hauler fee payable in such form and detail as the Director may require and such other information as the Director may determine is material to a determination of the amount due.

4. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting, by appropriate action, the sum that is actually due and payable.

5. The payment of C&D hauler fees to the City pursuant to this part shall be in addition to any license fee, tax or any other applicable fee or charge prescribed by any jurisdiction.

6. If C&D hauler fees are not paid by the C&D hauler at the times required by this Section, then, in addition to the C&D hauler fees, the C&D hauler shall pay a late payment charge in an amount equal to two percent (2%) of the C&D hauler fee that is due, plus interest equal to one and one-half percent (1½%) per month, accrued daily, from the time that the C&D hauler fee was due.

7. C&D hauler fees shall be payable on all gross collection revenues collected by a C&D hauler from its C&D debris collection services provided within the City. The C&D hauler fee shall be calculated based on gross collection revenues prior to the C&D hauler imposing the C&D hauler fee on its customers. C&D haulers shall also pay C&D hauler fees on revenues received from federal and state governments for services provided within the City.

B. Option 2. Applicant Responsibility:

C&D haulers shall not be responsible for C&D hauler Fees for services provided under Option 2. The applicant shall be responsible for an applicant fee in accordance with this Chapter and the C&D fee resolution of the City Council.

C. If any Person provides C&D debris services within the City in violation of this Chapter, the Person shall be liable for the C&D hauler fees in addition to any other applicable fee, charge, or penalty.

8.30.150 Termination or Suspension of C&D Hauler Permit

A. All C&D Hauler Permits granted pursuant to this Chapter shall terminate on December 31, 2011. A C&D Hauler Permit may be terminated by the Director for cause prior to that date as provided in this Chapter.

B. The Director shall have the right to terminate any C&D Hauler Permit granted pursuant to this Chapter if the Director finds that the C&D hauler has failed to comply with the provisions of this Chapter.

C. Any C&D Hauler Permit granted pursuant to this Chapter shall be automatically suspended whenever the C&D hauler fails to keep in full force and affect any applicable licenses or permits required by federal, state or local law. The suspension shall remain in effect until the C&D hauler provides documentation satisfactory to the Director verifying that the reason for the suspension no longer exists.

D. The Director may suspend any C&D Hauler Permit granted under this Chapter if the C&D hauler fails to submit timely reports as described in this Chapter within fifteen (15) days after written notice from the Director that a report is delinquent. The suspension shall remain in effect until the proper reports have been submitted to the satisfaction of the Director, or upon reversal or modification of the suspension following a successful appeal by the C&D hauler pursuant to this Chapter.

E. In the event the C&D Hauler Permit granted pursuant to this part is terminated, the C&D hauler shall have no right or authority to engage in C&D debris collection, transportation or disposal operations in the City unless and until a subsequent C&D Hauler Permit is granted to the C&D hauler.

F. In the event the C&D Hauler Permit granted pursuant to this part is suspended, the C&D hauler shall have no right or authority to engage in C&D debris collection, transportation, recycling or disposal operations in the City during the period of suspension.

G. In the event any C&D Hauler Permit granted pursuant to this part is terminated for cause, then within the time period specified by the Director, the C&D hauler shall:

1. Remove all of the C&D hauler's C&D debris containers from all service locations where services have been provided pursuant to such C&D Hauler Permit; and
2. Properly dispose of any and all C&D debris in the containers at the time of removal.

H. If the C&D hauler fails to remove any C&D debris container or to properly dispose of any C&D debris in any container within the time specified in this Chapter, the City may remove the container and/or dispose of the C&D debris therein and may charge the C&D hauler for the City's costs. The C&D hauler shall pay to the City all of the costs incurred by the City in such removal and/or disposal within ten days of the date of the City's invoice for such costs.

#### 8.30.160 C&D Hauler Permit Transfer or Assignment

Any C&D Hauler Permit granted pursuant to this part is a privilege to be held in trust by the original C&D hauler. A C&D hauler shall not sell, lease, transfer, assign or otherwise dispose of, either in whole or in part, whether by forced sale, merger, consolidation, reorganization or otherwise, a C&D Hauler Permit issued pursuant to this Chapter without the prior consent of the Director. Any such consent of the Director shall be subject to such terms and conditions as may be prescribed by the Director. This restriction includes the transfer of ownership of the C&D Hauler Permit, or a majority of the ownership or control of the C&D hauler, or the conveyance of a majority of the C&D hauler's stock to a new controlling interest. C&D Hauler Permits shall become void upon the abandonment of the business as determined by the Director.

8.30.170 C&D Hauler Reporting Requirements

A. The C&D hauler shall file with the Director quarterly reports of the quantities of C&D debris collected, transported, diverted, and/or disposed. Such reports shall be in such form and detail as required by the Director and specified below:

1. The C&D debris tonnage collected and removed within the City during the previous quarter;

2. The C&D debris tonnage collected and removed during the previous quarter within the City that was diverted and the identification of the facility(s) where such C&D debris was diverted;

3. The C&D debris tonnage collected and removed within the City that was disposed of during the previous quarter and the location(s) of the disposal facility(s) where the disposal of such waste occurred; and

4. The C&D hauler's progress in implementing its diversion plan and achieving the diversion requirements set forth in the C&D Program Guidelines.

B. C&D haulers may use information supplied by MRF's certified by the Director to meet the requirements of this Section.

C. All C&D haulers shall maintain quarterly records, on forms prescribed by the Director, containing such information as the number and types of customers served by the C&D hauler. This information shall be provided to the Director upon request. If upon review of this information the Director determines that the C&D hauler has claimed credit for the diversion of C&D debris that is already being Diverted by another Person for purposes of satisfying the diversion requirements set forth in the C&D Program Guidelines, such action by the C&D hauler shall constitute cause for termination or suspension of the C&D Permit pursuant to this Chapter.

D. A C&D hauler's failure to file the reports required by this Section shall constitute cause for termination or suspension of its C&D Permit.

E. If the required quarterly report, as outlined above, is not filed by the due date, the report shall be deemed delinquent, and the C&D hauler shall pay to the City a delinquent report charge in the amount of fifty dollars (\$50). If the report remains delinquent for more than fifteen (15) days, the C&D hauler shall pay to the City a delinquent report charge in an additional amount of one hundred dollars (\$100). Such delinquent report charge shall be in addition to any C&D Hauler Permit fees or other charges payable by the C&D hauler for the same period of time.

8.30.180 C&D Hauler Diversion Plans

A. Each C&D hauler holding a C&D Hauler Permit shall submit a diversion plan to the Director on an annual basis, no later than January 1 of each year. The diversion plan shall include a detailed description of how the C&D hauler intends to comply with the diversion requirements set forth in the C&D Program Guidelines. The Diversion Plan must include a description of the methods that the C&D hauler intends to use to satisfy its diversion requirements.

B. Within ninety (90) days from the date of receipt of a diversion plan, the Director shall determine whether the diversion plan complies with the requirements of this Chapter, and based on that determination shall approve or disapprove the diversion plan.

C. If the Director disapproves a diversion plan, the Director shall issue a notice of deficiency to the C&D hauler which identifies the specific reasons for the deficiency and specific recommendations on how to correct the identified deficiencies. Within thirty (30) days of receipt of the notice of deficiency, the C&D hauler shall correct the deficiencies and submit a revised diversion plan.

D. The failure to file a diversion plan shall constitute cause for termination or suspension of a C&D hauler Permit pursuant to this Chapter.

#### 8.30.190 Diversion Requirement

Diversion requirement means the diversion of a minimum proportion, by weight, of the total C&D debris generated by a covered project via reuse or recycling, unless the applicant has been granted an infeasibility exemption pursuant to this Chapter, in which case the diversion requirement shall be the maximum feasible diversion rate established by the Director for the project. The diversion requirement shall be specified in the C&D Program Guidelines.

#### 8.30.200 Diversion Compliance Fee

##### A. Option 1. C&D Hauler Responsibility:

1. Any C&D hauler found not to be in compliance with the Diversion Requirement shall pay a "diversion compliance fee" based upon the tonnage shortfall that would be needed for the C&D hauler to be diverting waste in compliance with the C&D Program Guidelines. The tonnage shortfall shall be based on quarterly reports and documented diversion reported by the C&D hauler, as determined by the Director.

2. The payment of the diversion compliance fee does not relieve a C&D hauler from the obligation of complying with the diversion requirement as specified in the C&D Program Guidelines.

3. A C&D hauler not in compliance with the Diversion Requirement in the prior quarter is required to increase diversion in subsequent quarters until it makes up the tonnage shortfall. C&D haulers shall not be in compliance with this Chapter, and, as such, subject to termination or suspension of their C&D Hauler Permit, until such time as the C&D hauler makes up all diversion tonnage shortfalls. Failure to pay any diversion compliance fee as specified in this Section shall constitute grounds for the immediate suspension of the C&D Hauler Permit, pending reinstatement by the Director following payment of the fee.

4. C&D haulers shall be responsible for reimbursement of audit costs for City staff, and any other City or Consultant services, to perform follow-up audits where staff determines that documentation of diversion, as reported by C&D haulers, is inadequate. Where necessary, City staff will retain the services of an independent consultant to verify performance and conduct any necessary diversion audits.

5. Any funds collected pursuant to this Section shall be directed to the City's solid waste enterprise fund.

6. The amount of the diversion compliance fee shall be set by resolution of the City Council.

B. Option 2. Applicant Responsibility:

Any applicant for a covered project that fails to submit documentation to the Director to verify compliance with the diversion requirement specified in the C&D Program Guidelines shall pay a "diversion compliance fee" based upon the tonnage shortfall.

8.30.210 Materials Recovery Facility Certification

A. C&D haulers may deliver C&D debris collected in the City to a MRF certified by the Director in order to comply with the diversion requirements specified in the C&D Program Guidelines.

B. MRF certifications made by the City shall be subject to quarterly review by the Director.

C. For compliance with the C&D hauler reporting requirements of this Chapter, certified MRF's may aggregate tonnage of wastes handled, diverted, and disposed for client C&D haulers. The certified diversion level shall apply to the facility and all tonnage handled at the facility, and need not be based upon individual loads taken to the facility by individual client C&D haulers.

8.30.220 Inspection Authority

A. Each C&D hauler shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under the C&D Hauler Permit granted pursuant to this Chapter; all C&D debris collected, transported and/or disposed of; the source of such C&D debris; and the final destination of such C&D debris. C&D hauler's books, accounts and records reasonably necessary for the enforcement of this Chapter shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the City. The City shall give written notice at least three (3) days prior to any inspection, audit or examination of these records

B. Where the Director determines that an audit is necessary, C&D haulers shall be responsible for reimbursement of City's audit costs, including any City staff or consultant services, to perform audits of accounts of all C&D hauler revenues and income arising out of operations under the C&D Hauler Permit granted pursuant to this Chapter.

8.30.230 Enforcement

Except as otherwise expressly provided, the provisions of this Chapter shall be administered and enforced within the City by the Director or other staff, and enforcement officials designated by the Director. The remedies set forth herein are cumulative to any other remedy available to the City. Nothing contained herein shall limit or be deemed to prevent the City from pursuing any other available remedy under this Code or any other applicable law.

8.30.240 Violation as a Nuisance

Any operation or activity in violation of the provisions of this Chapter is unlawful and shall constitute a public nuisance.

8.30.250 Public Hearings and Notices

A. Whenever a provision of this Chapter authorizes or requires a public hearing to be conducted by the City Council, notice of the time, date, place and purpose of the hearing shall be published at least once not later than ten (10) calendar days in advance of the date of such hearing in a newspaper of general circulation which is published within the City, and shall be served upon each C&D hauler who is affected by such hearing.

B. Any written notice or other communication to a C&D hauler which is authorized or required by this Chapter shall be deemed served and effective for all purposes when deposited in the United States mail, postage prepaid, and addressed to the latest address of the C&D hauler shown in the City records pertaining to the C&D Hauler Permit.

8.30.260 Signage

Each C&D hauler shall have permanently displayed in a prominent place on the exterior of each truck, drop-box, bin or container utilized in the collection, removal or transportation of C&D debris, under its C&D Hauler Permit, a sign which contains the company name, company telephone number, and individual identification number.

8.30.270 Office Required

Every C&D hauler shall at all times maintain a central office within the City, or within the Sacramento metropolitan region, where the agent or representative of the C&D hauler can be reached by telephone from 9:00 a.m. through 5:00 p.m., Mondays through Fridays, legal holidays excepted.

8.30.280 Disposal Restrictions

C&D hauler shall dispose of or process C&D debris collected or transported by C&D hauler only by taking such C&D debris to a landfill, transfer station, recycling facility or materials recovery facility of C&D hauler's choice, which is lawfully authorized to accept such C&D debris. C&D hauler shall not dispose of such C&D debris by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

8.30.290 Use of Containers

No person other than a customer who has contracted for service with a C&D hauler, or a person with such customer's consent, shall deposit C&D debris into a C&D debris bin, drop box or compactor placed in the City by a C&D hauler for the purpose of receiving C&D debris.

8.30.300 C&D Debris Ownership

C&D debris lawfully deposited in bins, drop-boxes or other containers used by a C&D hauler for collection for either disposal or recycling shall become the property of the C&D hauler upon its deposit in any such container.

8.30.310 Covered Load Requirement

A. All C&D hauler vehicles and all privately owned or operated vehicles operating within the City shall have their vehicle loads covered, with a tarp or equivalent cover, to ensure protection from littering during transportation.

B. All vehicles hauling materials with the load originating in the City to a waste disposal facility located outside of the City shall have their loads covered while in transit within the City.

8.30.320 Civil Penalties for Violations

In addition to any other remedy available to the City, this Chapter may be enforced pursuant to the administrative enforcement provisions of Chapter 1.09 of the Folsom Municipal Code. Unless otherwise specified, violations of this Chapter shall be level E violations, as defined in section 1.09.012 of the Folsom Municipal Code.

**SECTION 3 SEVERABILITY**

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any 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 section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 4 EFFECTIVE DATE**

This ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation within the City of Folsom.

This ordinance was introduced at the regular meeting of the City Council for the first reading on May 23, 2006 and the second reading is scheduled for June 13, 2006.



On a motion by Vice Mayor Howell, seconded by Council Member Starsky the foregoing ordinance is passed and adopted by the City Council of the City of Folsom, State of California, this 13<sup>th</sup> day of June, 2006 by the following vote, to wit:

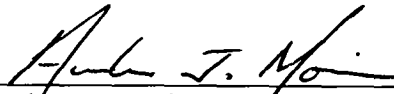
**PASSED AND ADOPTED** on this 13<sup>th</sup> day of June 2006, by the following roll-call vote:

AYES: Council Member(s): King, Miklos, Starsky, Howell, Morin

NOES: Council Member(s): None

ABSENT: Council Member(s): None

ABSTAIN: Council Member(s): None

  
\_\_\_\_\_  
Andrew J Morin, MAYOR

ATTEST:

  
\_\_\_\_\_  
Jaklyn Moran, DEPUTY CITY CLERK

Effective Date: July 13, 2006