ORDINANCE NO. 627

AN ORDINANCE OF THE CITY OF FOSTER CITY REPEALING TITLE 15 BUILDINGS AND CONSTRUCTION, CHAPTER 15.44 RECYCLING AND SALVAGING OF CONSTRUCTION AND DEMOLITION DEBRIS AND REPLACING WITH NEW CHAPTER 15.44 RECYCLING AND SALVAGING OF CONSTRUCTION AND DEMOLITION DEBRIS

CITY OF FOSTER CITY

IT IS SO ORDAINED by the City Council of the City of Foster City as follows:

Section 1. Title 15 Buildings and Construction, Chapter 15.44 Recycling and Salvaging of Construction and Demolition Debris of the Foster City Code is hereby repealed and replaced with the following:

15.44.010 Purpose.

The City has adopted the California Green Building Standards Code as a secondary code incorporated by reference herein. It is the intent of this Chapter to provide processes and requirements to ensure compliance with the California Green Building Standards Code, as incorporated herein.

15.44.020 Definitions.

For the purposes of this chapter, the following terms are defined as set forth below. If any definition below conflicts with a definition set forth in the CalGreen Code, the CalGreen Code shall control.

“Applicant” means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, industry, public or private corporation, property owner, contractor, architect 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.

“CalGreen Code” means the California Green Building Standards Code, California Code of Regulations Title 24, Part 11, as adopted as a secondary code under Section 1.01.010 of the Foster City Municipal Code.

“Construction and demolition debris” or “C&D” means and includes:

1. Discarded materials generally considered to be not water soluble and nonhazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard and lumber from the construction or demolition of a structure or hardscape improvement as part of a construction or demolition project or from the renovation of a structure, hardscape improvement and/or landscaping, and including rocks, soils, tree remains, trees and other vegetative matter that normally results from land clearing, landscaping and
development operations for a construction project;

2. New or clean materials including, but not limited to cardboard, paper, plastic, wood and metal scraps from any construction and/or landscape project; and

3. Minimal amounts of other nonhazardous wastes that are generated at the construction or demolition projects provided such amounts are consistent with best management practices of the industry.

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

"Covered project" means any project that is subject to the provisions of the CalGreen Code. Notwithstanding the foregoing, if the City's Building Official or Foster City Police determines that a dangerous situation or condition exists such that compliance with this chapter would cause a threat to health and safety, the Community Development Director may waive all or part of the requirements of this chapter.

"Deconstruction" means the soft demolition (careful dismantling and/or sorting for recycling and reuse) of any facility, structure, hardscape improvement or building through a planned dismantling and salvaging of reusable materials and parts.

"Demolition" means the deconstructing, destroying, tearing down or wrecking of any facility including its foundation and including any partial demolition and any interior demolition of a building.

"Designated recyclable and reusable materials" mean that portion of C&D that includes the following:

1. Masonry building materials including all products generally used in construction including, but not limited to asphalt, concrete, rock, stone and brick;

2. Wood materials including any and all dimensional lumber, fencing or construction wood that is not chemically treated, creosoted, contaminated or painted;

3. Vegetative materials including trees, tree parts, shrubs, stumps, logs, brush or any other type of plants that are cleared from a site for construction or other use;

4. Metals including all metal scrap such as, but not limited to, pipes, siding, window frames, doorframes and fences;

5. Roofing materials including wood shingles as well as asphalt, stone and slate-based roofing material;

6. Salvageable materials and structures, including, but not limited to gypsum wallboard, doors, windows, mantelpieces, cabinets, lighting fixtures, toilets, sinks,
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bathtubs, appliances, decorative molding, flooring, carpeting, reusable hardware, bricks and decorative tiles in good repair; and

7. Any other materials which the community development director or designee determines can be recycled or reused due to the identification of a recycling facility, reuse facility, or market accessible to Foster City, including facilities which can further sort mixed C&D through mechanical and/or manual processes in order to remove additional materials for reuse or recycling.

“Diversion” means any activity, including recycling, source reduction, reuse, deconstruction or salvaging of materials, which causes materials to be diverted from disposal in landfills or incinerators and instead used as the same or different product.

“Hardscape improvements” mean any improvement (nonbuilding) including but not limited to swimming pools, driveways, parking lots, walkways, patios and decks.

“Salvage” means the controlled removal of designated recyclable and reusable materials from C&D, from a covered project, for the purpose of recycling, reuse or storage for later recycling or reuse.

“Structure” means anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on the ground.

15.44.030 Diversion requirements and salvage of deconstruction materials.

A. C&D diversion must comply with the requirements diversion standards for the applicable project type, as specified in the CalGreen Code.

B. 100% of inert solids must be diverted from all construction and demolition projects.

C. Separate calculations prepared by the applicant and certified by the City’s Building Official shall be required for the demolition portion and for the construction portion of projects involving both demolition and construction.

D. Applicants and contractors are encouraged to make every structure and/or hardscape improvement planned for demolition available for deconstruction, salvage and recovery prior to demolition and to recover the maximum feasible amount of salvageable materials prior to demolition.

E. Recovered and salvaged designated recyclable and reusable materials from the deconstruction phase shall be counted toward meeting the diversion requirements of this chapter.

F. Recovered or salvaged materials may be given or sold on the premises, or may be removed to a reuse warehouse or other reuse facility for storage or sale.

15.44.040 Information required before issuance of permit.

A. Applicants shall submit to the City’s Building Division a properly completed Waste
Management Plan on a form(s) provided or designated by the City, as part of the building or demolition permit application process for covered projects.

B. The Waste Management Plan shall indicate, at a minimum, the information required by the CalGreen Code, including but not limited to:
   (1) an accurate estimate of the weight of project C&D to be generated by material type;
   (2) the estimated maximum volume or weight of materials that can be diverted by salvage, reuse, or recycling;
   (3) the vendor or facility that the applicant proposes to use to collect or receive material for recycling; and
   (4) the estimated volume or weight of C&D that will be land filled.

C. To estimate the volume or weight of materials identified in the Waste Management Plan, the applicant shall use the conversion rates approved by the City for this purpose.

D. Approval by the Building Official or designee of the Waste Management Plan as complying with this chapter shall be a condition precedent to issuance of any building or demolition permit for a covered project.

15.44.050 Deposit and administrative fee required.

A. As a condition precedent to issuance of any permit for a building or a demolition permit that involves the production of solid waste destined to be delivered to a landfill, the applicant shall post a cash deposit in the amount prescribed by the most current City Council approved Master Fees and Service Charges Schedule.

B. The deposit shall be returned, without interest, in total or pro rata, upon proof to the satisfaction of the Community Development Director or designee, that no less than the required percentages under the approved Waste Management Plan or proven proportion of those percentages of the tons of debris generated by the demolition and/or construction project have been diverted from landfills and have been recycled or reused. If a lesser percentage of tons or cubic yards than required are diverted, a proportionate share of the deposit will be returned. The deposit shall be forfeited entirely if there is a failure to comply with the requirements of this chapter.

C. As a condition precedent to the issuance of any building or demolition permit for a covered project, the applicant shall pay to the City a fee in the amount as set forth in the most current City Council approved Master Fees and Service Charges Schedule.

15.44.060 On-site practices and reporting.

A. To demonstrate compliance with the approved Waste Management Plan, the applicant shall collect during the project and submit the following documentation to the Building Department upon completion of the project:
   1. Weight tickets,
   2. Inventory of reused items,
   3. Receipts and other records from all recipients of discarded material that
demonstrate the reuse, recycling and disposal of all material generated by and hauled from the project, and

4. Such other documentation as necessary to establish compliance with the approved Waste Management Plan.

B. Within sixty days following the completion of the demolition phase of a covered project, and again within sixty days following the completion of the construction phase of a covered project, the applicant or applicant's contractor shall submit documentation to the Building Division which demonstrates compliance with the requirements of this chapter.

C. The documentation shall consist of a final completed form describing diversion activities and showing actual tonnage data for recycled, diverted and disposed materials, supported by originals or certified photocopies of receipts and weight tags or other records of measurement from recycling companies, deconstruction contractors and/or landfill and disposal companies. Receipts and weight tags will be used to verify whether materials generated from the site have been or are to be recycled, reused or salvaged.

D. Any deposit posted shall be forfeited if the permittee does not furnish the required reports within sixty (60) days following the final inspection or the issuance of any certificate of occupancy.

E. Forfeited deposits shall be turned over to the City’s fund designated to develop and expand recycling and waste reduction, clean energy generation, energy conservation, and air quality improvement programs.

F. Failure to keep accurate written records shall constitute a violation of this chapter and shall result in forfeiture of the deposit in addition to all other available remedies.

15.44.70 Annual diversion summary report.

A. On an annual basis, the Community Development Director or designee shall compile a report that, at a minimum, describes the number and type of permits issued, the number and type of projects covered by diversion requirements, the total tonnage generated and the estimated diversion resulting from these projects. Annual summary reports shall be kept on file for a period not less than ten years. Report data may be used for annual reporting purposes to demonstrate compliance with the mandates of AB939 to the California Integrated Waste Management Board.

15.44.080 Penalties and enforcement.

A. Any person violating, or causing or permitting to be violated, any of the provisions of this chapter, and the regulation adopted pursuant hereto, is guilty of a misdemeanor, and each such person, firm or corporation is guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted; and upon conviction of any such violations, such person, firm or corporation shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for
a period of not more than six (6) months, or both.

B. Notwithstanding any other provision of this code, whenever violation of any section contained in this code is punishable as a misdemeanor, the prosecuting attorney having jurisdiction to prosecute such misdemeanor may specify that the offense is an infraction and proceed with prosecution as an infraction, unless the defendant, at the time of his or her arraignment or plea, objects to the offense being made an infraction, in which event the complaint shall be amended to charge a misdemeanor and the case shall proceed on a misdemeanor complaint.

C. Civil Penalties. Any person who fails or refuses to submit a waste management plan for a covered project, shall be liable to the city for a civil penalty of not more than ten thousand dollars ($10,000) plus actual damages incurred by the city per violation per day for as long as the violation continues. In addition to the above-described penalty and damages, the city may recover reasonable attorney’s fees, court costs and other expenses associated with the enforcement activities, including sampling and monitoring expenses.

The city shall petition the court to impose, assess and recover such sums. In determining amount of liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, and any other factor as justice requires.

D. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of a provision of this code is a public nuisance and may be summarily abated as such. Each day that the condition continues it is a new and separate offense. Pursuant to Section 38773.5 of the California Government Code, in any action, administrative proceeding or special proceeding brought by the city of Foster City to abate a public nuisance, the prevailing party shall be entitled to reasonable attorneys’ fees. Recovery of attorneys’ fees shall be limited as follows:

1. To those actions or proceedings where the city has elected to recover attorneys’ fees at the initiation of such actions or proceedings;

2. The amount of attorneys’ fees in any action, administrative action or special proceeding awarded to a prevailing party shall not exceed the amount of reasonable attorneys’ fees incurred by the city in the action or proceeding.

15.44.090 Responsible party.

Every applicant and/or owner of property on which a covered project occurs shall be responsible for compliance with the provisions of this chapter.

Section 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause
or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 3. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 4. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the 6th day of May, 2019, and passed and adopted on the 20th day of May, 2019, by the following vote:

AYES: Councilmembers Awasthi, Gehani, Mahanpour, Perez, and Mayor Hindi

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:

PRISCILLA TAM, CITY CLERK

SAM HINDI, MAYOR
CERTIFICATE OF POSTING

I, Priscilla Tam, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified City Clerk/District Secretary of the City of Foster City, Foster City, San Mateo County, California.

I further certify to the proper posting of:

Ordinance No. 627, "An Ordinance of the City of Foster City Repealing Title 15 Buildings and Construction, Chapter 15.44 Recycling and Salvaging of Construction and Demolition Debris and Replacing With New Chapter 15.44 Recycling and Salvaging of Construction and Demolition Debris (First Reading on May 6, 2019)"

in the following three public places of the City of Foster City, Foster City, San Mateo County, California:

1. Recreation Center Lobby
   650 Shell Boulevard
2. Council Chambers (not a mandatory posting site)
   620 Foster City Boulevard
3. Foster City Public Library
   1000 E. Hillsdale Boulevard

Executed at the City of Foster City, Foster City, San Mateo County, California this 21st day of May, 2019.

[Signature]

Priscilla Tam
City Clerk