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2 **Sec. 82-115. Definitions.**

3 (a) For purposes of this Article the following definitions shall apply:  
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- 5 1. "Applicant" means any individual, firm, Limited Liability Company, partnership, industry, or  
6 private corporation, or any other entity that applies to the City for applicable permits or  
7 approvals to undertake any construction, demolition, grading, building, tenant improvement,  
8 work in the Public Right-of-Way or renovation project within the City that requires a  
demolition permit, building permit, grading permit or encroachment permit. An Applicant  
may be the property owner or an authorized agent acting on behalf of the property owner.
- 9 2. "Affiliate" means any subsidiary company of the Applicant or any parent company of the  
10 Applicant in which the Applicant has a financial interest and which is directly or indirectly  
11 under the operational control of the Applicant. An Applicant's general contractor, contractor or  
12 sub-contractor is not an Affiliate if the Applicant does not have both a financial interest in the  
13 Affiliate company and operational control of the Affiliate company.
- 14 3. "Certified Facility" means a facility the City has determined to be capable of handling mixed  
15 or unmixed loads of C&D debris and Diverts from the landfill at least 50 percent by weight  
16 from the mixed and unmixed (source separated) loads of C&D debris that are delivered to it  
17 and, in addition, is capable of Diverting from the landfill at least 75 percent by weight of all  
Inert Debris delivered to it.
- 18 4. "City Franchise Hauler" (CFH) shall have the meaning assigned to the term "garbage  
19 collector" in Chapter 82, Section 82-31 of the Concord Municipal Code.
- 20 5. "C&D Project" shall mean construction, remodeling, repair, demolition, improvement,  
21 encroachment, and grading operations on pavement, houses, commercial buildings, structures  
22 and construction sites for which a building, demolition, encroachment or grading permit is  
23 required by the City of Concord.
- 24 6. "C&D Materials" means solid wastes, such as building materials, packaging and Inert Debris  
25 resulting from C&D projects. Common C&D Materials include but are not limited to lumber,  
26 metals, pipe, wire, sheet metal, asphalt, concrete, stone, brick, slate, masonry, drywall, carpet,  
27 carpet padding and foam, packing materials, cardboard, paper, building materials, doors, windows,  
28 fixtures, plastics, appliances, ceiling or floor tiles, and green waste or landscape debris related to  
land development such as soil, brush, trees, rock, branches and stumps.
7. "Completion of the Covered Project" means the date of the Certificate of Occupancy of the  
Covered Project or, for projects where a Certificate of Occupancy is not applicable, the date on  
which the applicable permit was finalized by the City.

- 1 8. "Covered Projects" are subject to this Article. "Covered Projects" shall have the meaning set  
2 forth in Section 82-116.
- 3 9. "Disposed" means that solid waste including C&D Material is landfilled.
- 4 10. "Diverted", "Divert" or "Diversion" means that solid waste including C&D Material is not  
5 landfilled.
- 6 11. "Diversion Requirement" means the Diversion from the landfill of at least 50 percent by  
7 weight of solid waste including C&D Material generated by a Covered Project and, in  
8 addition, the Diversion from the landfill of at least 75 percent by weight of Inert Debris  
9 generated by a Covered Project, by reuse or recycling.
- 10 12. "Final Report" means information required in Section 82-122 of this Article and any  
11 supplemental information the Waste Management Compliance Official (WMCO) may require  
12 to determine Applicant's compliance with the requirements of this Article.
- 13 13. "Inert Debris" means asphalt, brick, concrete, cinder block and other masonry products, stone,  
14 slate, or rock, whether reinforced or unreinforced. All Inert Debris materials are contained  
15 within the definition of C&D Materials for purposes of this Article.
- 16 14. "Performance Security" means a non-interest bearing deposit in cash, check, money order, or  
17 by credit card acceptable to City as required by Section 82-118. The Applicant will not be  
18 credited with any interest on these funds while held by the City. A corporate surety bond or  
19 instrument of credit including a letter of credit may be acceptable as approved by the City on a  
20 case-by-case basis.
- 21 15. "Program Fee" is a payment amount established by the City Council intended to defray costs  
22 to the City for the program established by this ordinance.
- 23 16. "Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting  
24 materials that would otherwise become solid waste and returning them to the economic  
25 mainstream in the form of raw material for new, reused, or reconstituted products which meet  
26 the quality standards necessary to be used in the marketplace.
- 27 17. "Reuse" means the recovery or reapplication of the material for uses similar or identical to its  
28 originally intended application, without manufacturing or preparation processes that  
significantly alters the material.
18. "Residual" means contaminated material, separated from recyclable materials, that cannot be  
recycled, composted, marketed, or otherwise utilized, and shall be disposed of as Solid Waste.
19. "Self-Hauling" means the hauling of solid waste including C&D Material by the Applicant, or  
an Affiliate of the Applicant as "Affiliate" is herein defined, from the project site to a landfill  
or recycling facility or for reuse whether the Applicant is using their own equipment or has  
arranged with an Affiliate to haul solid waste including C&D Material from the project site.

1 20. "Solid Waste" means all putrescible and non-putrescible solid, semi-solid and liquid wastes  
2 including garbage, trash, refuse, paper, rubbish, ash, industrial waste, C&D Material, land  
3 clearing waste, discarded home and industrial appliances, and other discarded solid and semi-  
4 solid wastes as defined in the California Public Resource Code Section 40191, as that section  
5 may be amended from time to time. Solid Waste means all such materials defined in PRC  
40191 and, in addition, all such materials as defined in Chapter 82, Section 82-31 of the  
Concord Municipal Code.

6 21. "Waste Management Compliance Official" (WMCO) means the City Manager, his or her  
7 designee, or consultant hired by City.

8 **Sec. 82-116. Covered Projects.**

9 (a) Any construction, demolition, addition, alteration, remodel, encroachment, tenant improvement or  
10 grading project within the City is considered a Covered Project when it meets any of the following  
11 criteria:

- 12 1. The project requires a demolition, building, encroachment, or grading permit and it is either:
- 13 a. A residential or commercial project where total costs are valued at \$50,000 or greater,  
14 except for demolition projects which are Covered Projects regardless of permit value.
  - 15 b. A City-owned or City-sponsored project where total costs are valued at \$150,000 or greater.
  - 16 c. A residential or commercial roofing or re-roofing project valued at \$10,000, or greater, or a  
17 project where 50%, or more, of the roof area is re-roofed, or where a project requires five (5)  
squares, or more, of roofing material regardless of permit value.

18 (b) Any construction, demolition, addition, alteration, remodel, encroachment, tenant improvement or  
19 grading project within the City is exempt from the requirements of this Article if the City determines  
20 that no waste material will be off-hauled from the project site or otherwise generated by the project.

21 **Sec. 82-117. Diversion Requirements.**

22 (a) The Applicant for a Covered Project shall cause at least 50 percent by weight of the C&D  
23 Materials generated by the Covered Project to be Diverted from the landfill not counting Inert Debris  
24 and, in addition, shall cause at least 75 percent by weight of all Inert Debris generated by the Covered  
25 Project to be Diverted from the landfill.  
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1 **Sec. 82-118. Performance Security.**

2 (a) All Applicants with a Covered Project shall submit a Performance Security with the building,  
3 grading, demolition or encroachment permit application in an amount to be established by the City.  
4 Applicants of City-owned or City-sponsored projects shall be exempt from this requirement.

5 (b) Within 30 days of issuance by the City of a permit for the Covered Project Applicants utilizing the  
6 City Franchise Hauler (CFH) for the hauling of all waste materials from the project site shall submit to  
7 the City a copy of their hauling agreement with the CFH for the project. The City shall refund the  
8 Performance Security to the Applicant within a reasonable time following receipt of a copy of the  
9 hauling agreement between the Applicant and the CFH

10 (c) If the Waste Management Compliance Official (WMCO) determines that the Applicant has  
11 complied with the requirements of this ordinance the WMCO shall cause the Performance Security to  
12 be released to the Applicant within a reasonable time following acceptance of the Applicant's Final  
13 Report.

14 (d) If the WMCO determines the Applicant has failed to comply with the requirements of this  
15 ordinance, the entire Performance Security shall be forfeited to the City. The WMCO shall notify the  
16 Applicant in writing of the forfeiture within a reasonable time of denying the Applicant's Final  
17 Report.

18 (e) All forfeited Performance Security funds shall be placed in a designated fund for the purpose of  
19 recovering costs associated with this Article and furthering the recycling programs and goals of the  
20 City.

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22 **Sec. 82-119. Requirements of the Applicant for a Covered Project.**

23 (a) The Applicant for a Covered Project shall:

- 24 1. Divert at least 50 percent by weight of all solid waste including C&D Material generated by  
25 the Covered Project and, in addition, shall Divert at least 75 percent by weight of all Inert  
26 Debris generated by the Covered Project.
- 27 2. Pay a Program Fee as established by the City Council and set forth in the Fees & Charges  
28 Resolution.

- 1 3. Submit a Performance Security as established by the City Council and set forth in the Fees &  
2 Charges Resolution.
- 3 4. Provide a Final Report to the WMCO within thirty (30) days of the Completion of the Covered  
4 Project. Failure to provide a Final Report to the WMCO within thirty (30) days of the  
5 Completion of the Covered Project shall cause the Performance Security to be forfeited.
- 6 5. Retain a copy of the disposal and recycling receipts for the Covered Project for at least one  
7 year following Completion of the Covered Project. The date of Completion of the Covered  
8 Project is defined as the date of the Certificate of Occupancy of the Covered Project or, for  
9 projects where a Certificate of Occupancy is not applicable, the date on which the applicable  
10 permit was finalized by the City.
- 11 6. Retain a copy of the waiver for a third-party hauler, if one was issued, for at least one year  
12 following completion of the Covered Project.
- 13 7. Allow for an audit by the City or City's authorized representative of disposal and recycling  
14 receipts, records, and waiver for a third-party hauler (if one was issued) for the Covered  
15 Project within one year following Completion of the Covered Project.
- 16 8. Follow the processes required by this ordinance for the hauling of solid waste including C&D  
17 Material generated by the Covered Project.
- 18 9. Meet all other permit requirements as set forth in this ordinance and the Concord Municipal  
19 Code.

16 **Sec. 82-120. Program Fee.**

- 17 (a) The Applicant shall pay a Program Fee in an amount established by the City Council and set forth  
18 in the Fees & Charges Resolution.
- 19 (b) The intent of the Program Fee is to defray costs to the City for the program established by this  
20 ordinance.
- 21 (c) Applicants for all City-owned or City-sponsored projects shall be exempt from paying a Program  
22 Fee.  
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24 **Sec. 82-121. Solid Waste Including C&D Material Handling.**

- 25 (a) The Applicant for a Covered Project shall:  
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27 1. Ensure that at least 50 percent by weight of all solid waste including C&D Material generated  
28 by a Covered Project is Diverted and, in addition, ensure that at least 75 percent by weight of  
all Inert Debris generated by a Covered Project is Diverted. Material that is not Recycled can

1 be salvaged and/or Reused on-site or can be provided to others for Reuse and counted as  
2 Diverted material in the Applicant's Final Report.

- 3 2. Use the City Franchise Hauler (CFH) to transport the solid waste including C&D Material to  
4 certified recyclers or other entities with the ability to process the materials so they are Diverted  
5 from landfilling (exceptions include Self-Hauling or receiving a waiver granted by the CFH as  
6 explained below).
- 7 3. The Applicant may Self-Haul solid waste including C&D Materials generated by the Covered  
8 Project or direct an Affiliate to conduct hauling activities to achieve the Diversion  
9 Requirement, as "Self-Haul" and "Affiliate" are defined in Section 82-115. The Applicant is  
10 not required to request a waiver from the CFH to Self-Haul material or to direct an Affiliate to  
11 conduct hauling. An Applicant may only use a non-Affiliated company to haul solid waste  
12 including C&D Material if the CFH has granted a waiver to the Applicant.
- 13 4. If not Self-Hauling or using an Affiliate, Applicant is responsible for contacting the CFH to  
14 arrange for hauling services or request a waiver from the CFH to allow a non-Affiliated party to  
15 transport the C&D Material. If the CFH elects to allow a non-Affiliated party to provide  
16 service to the Applicant, the CFH must grant a written waiver to the Applicant to transport solid  
17 waste including C&D Material.
  - 18 a. The Applicant may request a waiver from the CFH via e-mail or written correspondence  
19 and must indicate the time, date, Applicant's name, and permit number for the Covered  
20 Project. The CFH will assign the Applicant a waiver number via fax or e-mail.
  - 21 b. Both the CFH and Applicant must maintain a copy of the waiver that indicates date and  
22 time, permit number, waiver certification number, and Applicant name for each waiver  
23 provided. A copy of the waiver must be submitted with the Final Report.
- 24 5. If the Covered Project material contains contamination by hazardous substances, the Applicant  
25 is required to Divert 50 percent by weight of non-contaminated material and, in addition, 75  
26 percent by weight of non-contaminated Inert Debris. Documentation acceptable to the City  
27 must be submitted to receive approval for exemption of materials from the requirements of this  
28 ordinance due to contamination by hazardous substances.

**Sec. 82-122. Reporting.**

(a) Within 30 calendar days of the completion of any Covered Project, the Applicant shall submit a Final Report to the WMCO documenting that it has met the Diversion Requirements for the Project.

The Final Report shall include the following documentation:

1. A summary of efforts to meet the Diversion Requirement on the form required by the City.

- 1 2. A copy of the hauling agreement with the CFH or a copy of the waiver for a non-Affiliated  
2 third-party hauler, if one was issued by the CFH for any portion of the project.
- 3 3. If the CFH was utilized for all hauling of solid waste including C&D Material from the project  
4 site submit a copy of all invoices received from the CFH for the Covered Project. If a third-  
5 party hauler, or Affiliate were utilized or if solid waste materials including C&D Materials  
6 were Self-Hauled submit all receipts from the facility that received C&D Material from the  
7 Covered Project showing the actual weight of material accepted at that facility and how much  
8 of the material was Diverted and Disposed. The weight reported must be from scales in  
9 compliance with all State and County regulatory requirements for accuracy and maintenance.  
10 For solid waste including C&D Material for which weighing is not practical due to small size  
11 or other considerations, the material type, and a volumetric measurement shall be reported.
- 12 4. If the Covered Project contains contamination by hazardous substances, the Applicant is  
13 required to provide documentation showing the contamination pre-existed or occurred through  
14 no fault of the Applicant and receipts, or other documentation, from the facility that received  
15 the contaminated material showing the actual weight of contaminated material accepted.
- 16 5. Any additional information the Applicant believes is relevant to describing its efforts to  
17 comply in good faith with this Article.

18 **Sec. 82-123. Compliance.**

- 19 (a) The Waste Management Compliance Official (WMCO) shall have final discretion in determining  
20 compliance.
- 21 (b) If the Applicant's Final Report shows that all solid waste including C&D Material generated by a  
22 Covered Project were hauled by the City Franchise Hauler (CFH) or taken to a Certified Facility the  
23 Applicant shall be considered by the WMCO to be in compliance with this Article.
- 24 (c) If the Applicant's Final Report shows that the solid waste including C&D Materials generated by  
25 a Covered Project were not hauled by the CFH or taken to a Certified Facility the Applicant's Final  
26 Report shall be reviewed by the WMCO to determine compliance.
- 27 (d) If the WMCO determines that the Applicant's Final Report provides sufficient information to  
28 determine that the Diversion Requirement has been satisfied, the WMCO shall notify the Applicant of  
its acceptance in writing.
- (e) If the WMCO determines that the Applicant has failed to comply with any Diversion Requirement  
the WMCO shall notify the Applicant in writing of the Applicant's failure to comply.

1 (f) If the WMCO determines that it is infeasible for the Applicant to meet the Diversion Requirement  
2 due to unique circumstances the WMCO shall determine the minimum feasible Diversion  
3 Requirement for the Covered Project and shall make a written finding stating reasons for acceptance  
4 of a lower Diversion Requirement. The WMCO may require additional information from the  
5 Applicant to assist in the determination of infeasibility and waive reporting and response timelines to  
6 facilitate the receipt of information from the Applicant.

7 (g) If the WMCO determines the Final Report is insufficient to determine compliance or  
8 noncompliance, the WMCO shall notify the Applicant of the reasons for the report's inadequacy in  
9 writing. The Applicant shall be granted 10 business days to respond with the information identified to  
10 make its Final Report adequate. Failure to respond with adequate information within 10 business days  
11 shall be considered a failure to comply. The WMCO shall notify the Applicant in writing of the  
12 failure to comply.

13 (h) If an Applicant fails to file a Final Report within thirty (30) days of the Completion of the Covered  
14 Project, the Applicant shall be considered to have failed to comply with the requirements of this  
15 Article and the Performance Security shall be forfeited. If the WMCO determines that extenuating  
16 circumstances apply the WMCO may, but is not required to, notify the applicant in writing of its  
17 failure to file a Final Report. The Applicant shall be granted 10 business days to respond and submit  
18 the Final Report. If the applicant fails to respond within 10 business days it shall be considered a  
19 failure to comply. The WMCO shall notify the Applicant in writing within a reasonable time of the  
20 failure to comply and the forfeiture of the Performance Security.

21 **Sec. 82-124. Appeal.**

22 (a) The Applicant may file an administrative appeal with the City Manager or his/her designee on any  
23 ruling the WMCO makes pursuant to this Article. Notice of appeal from the ruling of the WMCO  
24 must be filed within 30 calendar days of the date of the WMCO's finding of a failure to comply. The  
25 decision of the City Manager or his/her designee relative to any matter within the jurisdiction of the  
26 WMCO shall be final and shall not be further appealed to the City Council or to any other City body  
27 or official.  
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1 **Sec. 82-125. Enforcement.**

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3 (a) Enforcement by City:

- 4 1. In addition to forfeiture of Performance Security under Section 82-118(d) for any violation of  
5 this ordinance, the City shall have the discretion to take any or all of the following actions: (1)  
6 revoke or suspend the building, demolition, grading or encroachment permit of the violator;  
7 (2) bring a civil action for restitution and/or damages; (3) seek injunctive relief; (4) refer the  
8 violation for prosecution as a misdemeanor.
- 9 2. Final Reports are subject to an audit by a Waste Management Compliance Official up to one  
10 year after the City final the permit for the Covered Project. A failed audit is considered a  
11 violation of this ordinance and the City shall have the discretion to impose a fine of up to the  
12 amount of the original Performance Security for the Covered Project.
- 13 3. If any violation of this ordinance is charged as a misdemeanor, the penalty upon conviction of  
14 the violator shall be imprisonment in the county jail for a period not to exceed thirty (30) days  
15 or by a fine not to exceed \$1,000.

16 **Sec. 82-126. False Information.**

17 (a) The submittal of false information to the City by any person in connection with a building,  
18 demolition, encroachment, or grading permit application, Final Report, appeal or audit procedure shall  
19 be deemed a violation of this ordinance and shall subject the Applicant to enforcement as set forth in  
20 Section 82-125.

21 **Section 2.** This Ordinance No. 07-1 shall become effective on July 1, 2007. In the event a  
22 summary of said Ordinance is published in lieu of the entire Ordinance, a certified copy of the full text  
23 of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to its  
24 adoption and within fifteen (15) days after its adoption, including the vote of the Councilmembers.  
25 Additionally, a summary prepared by the City Attorney's Office shall be published once at least five  
26 (5) days prior to the date of adoption of this Ordinance and once within fifteen (15) days after its  
27 passage and adoption, including the vote of the Councilmembers, in the Contra Costa Times, a  
28 newspaper of general circulation in the City of Concord.

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Mark A. Peterson  
Mayor

ATTEST:

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Mary Rae Lehman  
City Clerk

(Seal)

Ordinance No. 07-1 was duly and regularly introduced at a regular joint meeting of the City Council and Redevelopment Agency held on [month d, yyyy], and was thereafter duly and regularly passed and adopted at a regular joint meeting of the City Council and Redevelopment Agency held on [month d, yyyy], by the following vote:

**AYES:** Councilmembers -

**NOES:** Councilmembers -

**ABSTAIN:** Councilmembers -

**ABSENT:** Councilmembers -

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

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Mary Rae Lehman  
City Clerk