

**ORDINANCE NO. 539 N. S.**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON ADDING  
ARTICLE VI TO TITLE IV, CHAPTER 13 OF THE TIBURON MUNICIPAL  
CODE BY ESTABLISHING RECYCLING AND DIVERSION  
REQUIREMENTS FOR CONSTRUCTION AND DEMOLITION WASTE**

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The Town Council of the Town of Tiburon does ordain as follows:

**Section 1. Findings**

1. The Town Council adopted a Construction and Demolition (C&D) recycling policy on October 16, 2002 by adoption of Resolution No. 59-2002.
2. With the adoption of said policy, the Town met the then-existing goal of the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) for diversion of materials from landfill and transformation facilities at a 50% diversion rate.
3. The JPA has since increased the goal for diversion of materials from landfill and transformation facilities to 80% by the end of 2012.
4. The JPA estimates that inert and mixed construction and demolition waste constitutes approximately 16% of the materials land-filled in Marin County and a similarly large portion of the waste stream in Tiburon, and these materials have significant potential for reduction and recycling.
5. Construction and demolition waste reduction and recycling have been proven to reduce the amount of such waste in landfills, to increase site and worker safety, and to be cost effective.
6. The Town Council finds that, except in unusual circumstances, it is feasible to divert on average 100% asphalt and concrete, and at least 70% of all remaining C&D debris from most construction, demolition, and renovation projects.
7. The Town Council desires to update and codify its existing policy into the Tiburon Municipal Code in order to match the goal set forth by the JPA and increase the diversion of materials from landfill and transformation facilities to achieve an 80% diversion goal by 2012 and aim for 94% diversion by 2025, with an ultimate goal approximating Zero Waste.
8. The Town's recently-adopted Climate Action Plan calls for adoption of a C&D Waste ordinance by the Town of Tiburon.
9. The Town Council finds that in order to ensure compliance with diversion standards set forth herein, recycling facilities will be evaluated annually through an extensive certification process conducted by the JPA.

10. The Town Council finds that adoption of this ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines (14 Cal. Code §15308) because it is an action taken by a regulatory agency for the protection of the environment and no exceptions to this categorical exemption apply.

## **Section 2. Amendment of Municipal Code.**

Article VI is hereby added to Title IV, Chapter 13 (Building Regulations) of the Tiburon Municipal Code to read as follows:

Article VI. Recycling and Diversion of Construction and Demolition (C&D) Waste.

### **Sections:**

13-17	Definitions
13-18	C&D diversion report required
13-19	C&D diversion report exempted
13-20	Certified recycling facilities
13-21	Diversion requirements
13-22	Use of avoided disposal regulatory fees
13-23	Violation and penalties

13-17 Definitions. For the purposes of this Article, the following words and phrases shall have the following definitions:

“Alternative daily cover (ADC)” means disposal facility cover material, other than organic waste and at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of the California Code of Regulations.

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

“Avoided disposal regulatory fee” means three percent (3%) of the valuation of the project, not to exceed ten thousand dollars (\$10,000).

“Certified recycling facility” means a recycling, composting, materials recovery or re-use facility determined to process incoming construction and demolition materials to divert from landfill or transformation for which the JPA has issued a certification.

“C&D diversion report” means a report submitted by an applicant, on a form approved by the building official, which contains an estimate of the amount of C&D waste generated by the project, documentation of the diversion of C&D waste, and such additional information deemed necessary by the building official to document accomplishment of the requirements of this chapter.

“Construction and demolition waste” or “(C&D waste)” means used or discarded materials removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair, deconstruction or demolition operations on any pavement, house, commercial building or other structure.

“Building official” means the building official of the Town of Tiburon, including his or her designee.

“Deconstruction project” means a process to carefully dismantle or remove useable materials from structures, as an alternative to demolition.

“Diversion” or “diverted” means a reduction of the amount of waste being disposed in a landfill or transformation facility by any of the following methods:

- (1) Use of new construction methods, as described in regulations promulgated by building official, that reduce the amount of waste generated.
- (2) On-site re-use of the waste.
- (3) Delivery of the waste from the site to a certified recycling facility.
- (4) Other methods as approved in regulations promulgated by the building official.

“Joint Powers Authority” or “JPA” means the Marin County Hazardous and Solid Waste Management Joint Powers Authority.

“Project” means a construction, demolition, alteration or renovation activity for which a building permit is required by chapter 13 of this code, with the exception of building permit work exempted under section 13-19 of this article.

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting materials such as newsprint, mixed paper, glass containers, aluminum beverage containers, small scrap and cast aluminum, steel including “tin” cans, empty aerosol cans, bimetal containers, plastic bags, plastic food containers, #1-#7 plastics regardless of form or mold, aluminum foil and pans that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place.

“Reuse” means using an object or material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material.

"Transformation" means incineration, pyrolysis, distillation, or biological conversion other than composting. "Transformation" does not include composting, gasification, or biomass conversion.

13-18 C&D diversion report required.

(a) On or after June 1, 2012, each applicant who applies for a building permit for a project shall submit a completed C&D diversion report (Part 1), acceptable to the building official, prior to issuance of the permit.

(b) On or after June 1, 2102, no building permit for a project shall be issued by the building official unless an acceptable, completed C&D diversion report (Part 1) form has been submitted for the project.

(c) Prior to obtaining any final inspection/permit sign-off and/or certificate of occupancy from the building official, an applicant who has obtained a building permit for a project shall remit a completed C&D diversion report (Part 2) acceptable to the building official.

(d) An avoided disposal regulatory fee shall be imposed if a certified recycling facility is not used, if required recycling/reuse receipts are not submitted, or if the building official determines that the applicant has not satisfied the diversion requirements set forth in section 13-21 of this article. The avoided disposal regulatory fee shall be calculated as three percent (3%) of the valuation of the project, not to exceed a fee of ten thousand dollars (\$10,000).

13-19 C&D diversion report exemptions.

(a) A C&D diversion report shall not be required for the following:

- (1) Deconstruction projects.
- (2) Work for which a building permit is not required under this chapter.
- (3) Alterations to existing residential or non-residential buildings that affect less than five hundred (500) square feet of floor area, as determined by the building official.
- (4) Removal and reinstallation of roof covering materials.
- (5) Work for which only a plumbing permit, electrical or mechanical permit is required.
- (6) Voluntary residential seismic retrofit projects.
- (7) Installation or replacement of shelves.
- (8) Installation of pre-fabricated patio enclosures and covers where no foundation or other structural building modifications are required.
- (9) Installation of swimming pools and spas, provided that the exemption shall apply only to (i) the area to be excavated for the installation of the pool or spa and (ii) the area for the pad for the pool/spa equipment that does not exceed sixteen square feet; and shall not apply to any related construction or alterations necessary for any other equipment or accessories, nor to any other portion of the project.
- (10) Installation of pre-fabricated accessories such as signs or antennas where no structural building modifications are required.

(b) No project shall be separated into smaller projects for the purpose of evading the requirements of this article.

13-20 Certified recycling facilities.

(a) The JPA may certify a facility as a certified recycling facility if the owner or operator of the facility submits the following documentation satisfactory to the JPA:

- (1) The facility has obtained all applicable federal, state and local permits, and is in full compliance with all applicable regulations; and
- (2) The percentage of incoming waste from construction, demolition and renovation activities that is diverted from landfill disposal, transformation and use as ADC meets the minimum diversion requirement as set forth in section 13-21.

(b) The Town shall make available to each building permit applicant a current list of certified recycling facilities, as certified by the JPA.

13-21 Diversion requirements. Diversion requirements for a project and for a certified recycling facility shall be a minimum of seventy percent (70%) prior to December 31, 2012, and shall increase to minimums of 80% on December 31, 2012, 85% on December 31, 2015, 90% on December 31, 2018, and 94% on December 31, 2025.

13-22 Use of avoided disposal regulatory fees. Moneys received by the town as avoided disposal regulatory fees shall be used only for:

- (a) Costs of administration of the program established by this article;
- (b) Cost of programs whose purpose is to divert the waste from construction, demolition, and alteration projects from landfill disposal, transformation and use as ADC; and
- (c) Costs of programs whose purpose is to develop or improve the infrastructure needed to divert the waste from construction, demolition and renovation projects from disposal in a landfill, transformation facility or use as ADC.

13-23 Violations and penalties.

(a) Violations of this article shall be punishable as misdemeanors or infractions, at the discretion of the Town's designated code enforcement official following consideration of the severity of the violation. Penalties shall not exceed the amounts set forth in Government Code Sections 36900 and 36901.

(b) Each violation of this article is a separate offense for every day such violation shall continue, and the penalties for violation shall be imposed on each and every separate offense.

(c) Nothing in this section limits the power of the Town to use all other legal or equitable remedies to redress, abate, or punish any violation of the provisions of this article, including, without limitation, those set forth in Title VI, Chapter 31 of this code.

**Section 3. Severability.**

If any section, subsection, clause, sentence, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council of the Town of Tiburon hereby declares that it would have passed this Ordinance, any section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

**Section 4. Effective Date.**

This Ordinance shall take effect and be in force thirty (30) days after the date of passage, and before the expiration of fifteen (15) days after passage by the Town Council, a copy of the ordinance shall be published with the names of the members voting for and against it at least once in a newspaper of general circulation in the Town of Tiburon.

This ordinance was read and introduced at a regular meeting of the Town Council of the Town of Tiburon, held on the 18th day of April, 2012, and was adopted at a regular meeting of the Town Council of the Town of Tiburon, held on the 2nd day of May, 2012, by the following vote:

AYES: COUNCILMEMBERS: Collins, Doyle, Fraser, Fredericks, O'Donnell

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

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JIM FRASER, MAYOR  
TOWN OF TIBURON

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK