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ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 15.32, "CONSTRUCTION AND DEMOLITION DEBRIS," TO TITLE 15 OF THE NAPA MUNICIPAL CODE ESTABLISHING REQUIREMENTS FOR THE DIVERSION AND RECYCLING OF CONSTRUCTION AND DEMOLITION DEBRIS; ADDING A NEW CHAPTER 1.26, "APPEALS AND HEARING PROCEDURE FOR ADMINISTRATIVE DETERMINATIONS," TO TITLE 1 OF THE NAPA MUNICIPAL CODE TO ESTABLISH PROCEDURES FOR APPEALS OF ADMINISTRATIVE DETERMINATIONS; AND AMENDING AND CONSOLIDATING EXISTING CODE REFERENCES TO SUCH APPEALS

WHEREAS, under California law as embodied in Assembly Bill 939 (AB 939), the California Waste Management Act, of 1989 (California Public Resource Code Sections 40000 *et seq.*), the City is required to prepare, adopt and implement source reduction and recycling plans and programs to reach landfill diversion goals and is required to make substantial reductions in the waste materials going to the landfills; and

WHEREAS, cities and counties in California that fail to attain the solid waste diversion goals mandated by the California Waste Management Act face fines up to $10,000 a day; and

WHEREAS, in order to meet these goals it is necessary that the City promote the reduction of solid waste, and reduce the stream of solid waste going to landfills; and

WHEREAS, on January 1, 2011, the California Building Standards Commission will begin enforcing a statewide, mandatory Green Building Standards Code (CalGreen) requiring all new buildings in the state to be more energy efficient and environmentally responsible; and

WHEREAS, CalGreen will require projects to divert 50 percent of construction waste from landfills; and

WHEREAS, the City of Napa has adopted a Green Building Ordinance, codified at Napa Municipal Code Chapter 15.30, to promote sustainable design practices on new projects, and which requires mandatory compliance with certain California Green Building Code standards in advance of their statewide effective date of January 1, 2011, as well as establishing various local amendments and modifications to CalGreen; and

WHEREAS, the City Council finds that reusing and recycling Construction and Demolition Debris (C&DD) is essential to further the City's efforts to reduce waste and comply with AB 939 goals and the City's Green Building Ordinance; and

WHEREAS, the City Council finds that it is feasible to divert an average of at least fifty percent (50%) of all C&DD debris from most City and private construction, demolition, and renovation projects within the City of Napa, and eighty percent (80%) of all concrete and asphalt from most City and private construction, demolition, and renovation projects within the City of Napa, except in unusual circumstances; and

WHEREAS, in conjunction with the introduction and adoption of C&DD diversion regulations, the City Council wishes to provide for appeals of determinations made by the C&DD Compliance Official by administrative hearing, and finds that there is a need to amend the Municipal Code to provide a uniform procedure for conduct of such administrative hearings; and

WHEREAS, there is a need to update several references within the Municipal Code to consolidate references to administrative hearings and reflect the revised procedure for the conduct of such hearings; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

SECTION 1: Amendment. A new Chapter 15.32 is hereby added to Title 15 of the Napa Municipal Code to read as follows:

Chapter 15.32

CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING AND DIVERSION

Sections:

15.32.010	**Purpose and Intent**
15.32.020	**Definitions**
15.32.030	**Administrative Fee**
15.32.040	**Covered Projects**
15.32.050	**Submission of Waste Reduction and Recycling Plan**
15.32.060	**Review of Waste Reduction and Recycling Plan**
15.32.070	**Compliance with Waste Reduction and Recycling Plan**
15.32.080	**Annual Review of Waste Reduction and Recycling Plan Requirements**
15.32.090	**Designated Recyclable and Reusable Materials List**

15.32.100	**Exemptions**
15.32.110	**Appeals**
15.32.120	**Enforcement**
15.32.130	**Fine for Non-Performance**
15.32.140	**Removal of Unlawfully Placed Solid Waste Containers**
15.32.150	**Containers for Collection of Recyclable Solid Waste Exempted**
15.32.160	**Illegal Dumping**

15.32.010 Purpose and Intent

The purpose of this Chapter is to prescribe requirements designed to meet and further the goals of the California Integrated Waste Management Act of 1989, commonly referred to as Assembly Bill 939 (as codified under California Public Resources Code 40000 *et seq*), to comply with the statewide, mandatory Green Building Standards Code (CalGreen) requiring all new buildings in the state to be more energy efficient starting January 1st of 2011, and to support the City of Napa's Green Building regulations, as codified under Napa Municipal Code Chapter 15.30 affecting new development.

15.32.020 Definitions

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usages For the purposes of this Chapter, the following definitions apply:

A. "Administrative Fee" means the cost associated with processing, reviewing, and deeming compliance with Waste Reduction and Recycling Plans.

B. "Alternative Daily Cover" (ADC) means materials other than soil used as a temporary overlay on an exposed landfill face.

C. "Applicant" means any person, firm, partnership, association, joint venture, limited liability company, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the City for the applicable permits to undertake any construction, demolition, renovation or remodeling project within the City of Napa, unless otherwise specifically exempted by law.

D. "City project" means any City-funded construction or reconstruction project with a construction cost of $100,000 or more as verified by the City Engineer, or a new City-funded construction or reconstruction project that exceeds 5,000 square feet of new, improved, or remodeled area. For the purposes of calculating the square footage of a City project, the square footage of a Public Construction Project shall not include the portion of any project that includes:

a) Underground public works projects

b) Street or sidewalk construction

c) Tree planting

d) Utility facilities with the exception of administrative buildings and facilities which house City employees

E. "Compliance Official" means the C&DD Compliance Official, who is hereby deemed to be the City of Napa's Materials Diversion Administrator, or a designee of the Materials Diversion Administrator or the City Manager.

F. "Construction" means the building, remodeling or repair of any facility, structure or improvement or any portion thereof, including but not limited to any tenant improvement, site or utility improvement, to an existing facility, structure or improvement.

G. "Construction and Demolition Debris (C&DD)" means waste building materials, debris, packaging and rubble resulting from construction and demolition operations on pavements, houses, commercial and industrial buildings and other structures and improvements, and that are not hazardous, as defined in California Code of Regulations, Title 22, section 66261.3 and that contain no more than 1% putrescible wastes by volume.

H. "Conversion rate" means the rate set forth in the standardized Conversion Rate Table approved by the City's Public Works Director for use in estimating the volume or weight of materials identified in a waste management plan that is in effect on the date of the complete application for a WRRP. The conversion rate table shall be maintained on file with the Public Works Director.

I. "Covered project" shall mean a construction or demolition project that meets one of the following: 1) a project that exceeds $100,000 in building valuation; or 2) a construction project that exceeds 5,000 square feet of new, improved, or remodeled area; or 3) a demolition exceeding 5,000 square feet in floor area; or 4) all City projects for which a building permit would normally be issued.

Note: For the purposes of this Chapter, square footage shall be defined and calculated as the total developed or habitable square foot of a building or project. For example, a 3-story building with 2,000 square foot of office space on each floor, would be considered to be 6,000 square feet, and therefore considered a covered project under this Chapter.

A covered project shall not include any of the following, which are exempt from the requirements of this Chapter:

1. Immediate or emergency demolition required to protect the public health, safety or welfare, as determined by the Compliance Official or any public safety official or code compliance officer of the City given prior to demolition.

2. A project of City public works or City public construction for which the notice inviting bids has been published prior to the effective date of this Chapter.

3. A project contaminated by hazardous substances or waste as defined by state or federal law.

4. Landscape projects performed by commercial gardeners servicing residential and commercial customers. Materials generated under this project should be recycled or composted whenever possible, but are not subject to the requirements of this Chapter.

5. Any project for which compliance with this Chapter would impair a vested right to proceed with a building or project application conferred either under common law, a Development Agreement, a Vesting Tentative Map, or other legal doctrine or statute limiting the City's ability to apply new laws and regulations to building or development proposals.

J. "Deconstruction" means the systematic removal of usable items from a facility, structure, or improvement in order to salvage materials for diversion.

K. "Demolition" means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, improvement, pavement or building, whether in whole or in part, whether interior or exterior.

L. "Divert" means to use material for any purpose other than disposal in a landfill, and shall include reuse, recycling and salvage.

M. "Diversion requirement" means the diversion of at least fifty percent (50%) by weight of the total Cⅅ and eighty percent (80%) of concrete and asphalt; generated by a project via reuse or recycling, unless the applicant has been granted an infeasibility exemption, in which case the diversion requirement shall be the maximum feasible diversion rate established by the Compliance Official for the project. Diversion requirements increase in later years as noted in Section 15.32.050(D) of this Chapter and are subject to annual review as noted in Section 15.32.050.(F).

N. "Non-covered project" shall mean a project that is exempt or does not exceed the minimum threshold that triggers compliance with this Chapter and thus is not a covered project. Non-covered projects do not to have to comply with the diversion percentage requirements of this Chapter or submit a Waste Reduction and Recycling Plan, but still need to divert for recycling the materials noted in 15.32.090.

O. "Program" means the City's administration, implementation and enforcement of the provisions of the C & DD regulations set forth in this Chapter.

P. "Project" means any construction or demolition activity which requires an application for a building, demolition or any other permit from the City.

Q. "Public Works Director" means the Public Works Director as defined under Section 15.40.010 or a designee of the Public Works Director or the City Manager.

R. "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

S. "Reuse" means further or repeated use of C &DD.

T. "Salvage" means the controlled removal of C&DD from a permitted construction or demolition site for the purpose of recycling, reuse or storage for later recycling or reuse.

U. "Temporary Certificate of Occupancy" means a temporary occupancy permit granted by the City of Napa's Building Division of the Community Development Department.

V. "Valuation" means the project's value in US dollars as assigned by the Chief Building Official of the City of Napa, except for City Projects, whose valuation shall be determined by the City Engineer. . This valuation will used to determine whether a project is required to meet the diversion requirements established for covered projects under this Chapter, and to establish the maximum possible penalty for violations of this Chapter as set forth in 15.32.120.

W. "Waste Reduction and Recycling Plan (WRRP)" means a completed City approved WRRP form submitted by the applicant for any covered project. The requirements for a WRRP are set forth in greater detail under 15.32.050 and 15.32.060.

15.32.030 Administrative Fee

Applicants shall pay a non-refundable administrative fee, established by resolution of the City Council, to pay for the administrative costs associated with review and enforcement of the WRRP submittal. This administrative fee will be collected as part of the building permit application for covered projects.

15.32.040 Covered Projects

A. Covered projects: All covered projects shall comply with this chapter. City projects shall submit a WRRP to the C&DD Compliance Official prior to the first to occur of either 1) the issuance of a building permit, or 2) the commencement of any construction or demolition activities and shall be subject to all applicable provisions of this Chapter.

B. Non-covered projects: Applicants for non-covered projects are not required to submit a WRRP, but shall be encouraged to divert at least fifty percent (50%) of all project-related C&DD, and shall be required to recycle all materials specified in Section 15.32.090 of this Chapter.

15.32.050. Submission of Waste Reduction and Recycling Plan

A. WRRP forms: Applicants for building permits involving any covered project shall complete and submit a completed WRRP, on forms approved by the City for this purpose, as part of the application packet for the building permit. The completed WRRP shall indicate all of the following:

1. The estimated volume or weight of project C&DD, by materials type, to be generated;

2. The maximum volume or weight of such materials that can be diverted via reuse or recycling;

3. The vendor or facility that the applicant proposes to use to collect or receive that material, which must be consistent with the requirements of this Chapter and Napa Municipal Code Chapter 5.60; and

4. The estimated volume or weight of C&DD that will be landfilled.

5. Payment of the administrative fee authorized by 15.32.030 and established by resolution of the City Council.

6. If the applicant is requesting that that Compliance Official grant an infeasibility exemption pursuant to 15.32.090, the applicant shall submit a written application for exemption along with the WRRP accompanied by a site plan of the project and stating the basis for the requested exemption.

7. The WRRP shall establish a primary point of contact for implementation and compliance. In addition to serving as contact for the programmatic elements of the WRRP, the primary point of contact will be responsible for notifying and instructing all employees, subcontractors, and material haulers of the recycling requirement and the methods to be employed in meeting that requirement.

B. Calculating volume and weight of debris: In estimating the volume or weight of materials identified in the WRRP, the applicant shall use standardized conversion rates approved by the City for this purpose.

C. Deconstruction and Reuse: In preparing the WRRP, applicants for permits involving the removal of all or part of an existing facility, structure or improvement shall deconstruct, to the maximum extent feasible, and shall make the materials generated thereby available for salvage. Reuse will be considered as diversion for the purposes of complying with this Chapter. Applicants shall specify materials designated for reuse, whether on-site or at another site, in the WRRP, and shall specify the proposed method of reuse .

D. Diversion Requirements: The diversion requirements established by this Chapter are 50% of all construction and demolition debris for a covered project and 80% of all concrete and asphalt. The diversion requirements for construction and demolition debris for covered projects will increase to 55% in 2015 and 60% in 2020.

E. Alternative Daily Cover (ADC): The use of ADC as a means for achieving the diversion requirements of this Chapter is not permitted. For the purposes of quantifying the diversion rate of any covered project, ADC will be considered neutral. That is, it does not count towards diversion or disposal in regards to the achievement of 50% diversion.

15.32.060. Review of Waste Reduction and Recycling Plan

A. Approval: Notwithstanding any other provision of this Chapter, no building permit shall be issued for any covered project until the Compliance Official has approved the WRRP. The Compliance Official shall not approve a WRRP unless he or she finds, based on all information and documentation provided by the applicant and any other information, that the applicant has borne the burden of proving each of the following requirements:

1. The WRRP provides all of the information required in the form; and

2. The WRRP indicates that the diversion requirement will be met.

If the WRRP official determines that these conditions have been met, he or she shall mark the WRRP 'Approved', return a copy of the WRRP to the applicant, and notify the building division that the WRRP has been approved.

B. Non-approval: If the WRRP official determines that the WRRP is incomplete or fails to indicate that the diversion requirement will be met, he or she shall either:

1. Return the WRRP to the applicant marked 'Denied', including a statement of reasons for the denial, and will notify the building division, which shall then immediately stop processing the permit application; or

2. Return the WRRP to the applicant marked 'Further Explanation Required' and note the information needed to achieve compliance.

15.32.070 Compliance with Waste Reduction and Recycling Plan

A. Documentation: Within sixty (60) days of the final inspection, the applicant shall submit documentation, signed and certified under penalty of perjury, to the Compliance Official that the diversion requirement for the project per the approved WRRP has been met. This documentation shall include all of the following:

1. Receipts from the vendor or facility which collected or received each material showing the actual weight or volume of that material. Receipts and weight tags shall be used to verify whether materials generated from the site have been or are to be recycled, reused, salvaged, or otherwise disposed of;

2. A copy of the previously approved WRRP for the project adding the actual volume or weight of each material diverted and landfilled; and

3. Any additional information the applicant believes is relevant to determining its efforts to comply in good faith with this Chapter.

It shall be unlawful for an applicant to deliberately provide false or misleading data to the city.

If the applicant fails to submit the required documentation within the required ninety (90) days, the City may take any enforcement action set forth in Title 1 of this Code and if a deposit has been required then the applicant shall forfeit his or her deposit.

B. Weighing of wastes: Applicants shall make reasonable efforts to ensure that all C&DD diverted or landfilled is measured and recorded using the most accurate method of measurement available. To the extent practical, all C&DD shall be weighed by measurement on certified scales at any solid waste (transfer stations and landfills) or recycling facility used to achieve compliance with this ordinance. Such scales shall be in compliance with all regulatory requirements, for accuracy and maintenance. For C&DD for which weighing is not practical, due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates approved by the City for this purpose.

C. Determination of compliance: The Compliance Official shall review the information submitted and determine whether the applicant has complied with the diversion requirement, as follows:

1. Full or Substantial compliance: If the Compliance Official determines that the applicant has fully complied with the diversion requirements applicable to the

project, as set forth in the WRRP, he or she shall issue a letter of completion to the applicant and inform the Building Division. If the Compliance Official 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 and is in substantial compliance with this Chapter. In making this determination, the Compliance Official shall consider the availability of markets for the C&DD that was disposed of in a landfill, the size of the project, and the documented efforts of the applicant to divert C&DD. If the Compliance Official determines that the applicant has made a good faith effort to comply with this Chapter and is in substantial compliance with the diversion requirements applicable to the project, as set forth in the WRRP, he or she will issue a letter of completion to the applicant and shall inform the building division.

In order to facilitate temporary occupancy of a project near completion, an applicant may submit documentation, including weight tags, when it is clear that the diversion requirements established in the WRRP will be met. The Compliance Official can make a determination of "substantial compliance" as part of the Building Division's issuance of a "temporary certificate of occupancy". This will not relieve the applicant from completing the documentation required to achieve "full compliance" at a later date.

2. Non-compliance: If the WRRP official determines that the applicant is not in substantial compliance with this Chapter or if the applicant fails to submit the documentation required, then City may take any enforcement action set forth Title 1 of this Code.

15.32.080 Annual Review of Waste Reduction and Recycling Plan Requirements

The requirements of the WRRP, the form itself, and the program are subject to annual review by the Compliance Official. Elements of the program, including threshold for covered projects, diversion requirements, designated recyclable and reusable materials list (as provided for under 15.32.090) may be adjusted by the Public Works Director for just cause (economic conditions, inflation, emerging recycling markets, etc.).

15.32.090 Designated Recyclable and Reusable Materials List

The following lists of materials are considered to be recyclable materials and shall be diverted from landfill though reuse or using local recycling markets. This diversion requirement applies to both covered and non-covered projects, building permit application, and City Sponsored Projects and is irrespective of the diversion percentage requirements of this Ordinance. Designated Recyclable and Reusable Materials are as follows:

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

- Wood materials including any and all dimensional lumber, fencing, or construction wood that is not chemically treated, creosoted, Chromated Copper Arsenate pressure treated, contaminated, or painted.
- Vegetable and organic materials suitable for composting including trees, tree parts, shrubs, small stumps, logs, brush, or any other type of plants that are cleared from a site for construction or other use.
- Metals including all metal scrap such as, but not limited to, pipes, siding, window frames, door frames, and fences.
- Salvageable materials and structures that are in good working order and can be reused, including, but not limited to wallboard, doors, windows, fixtures, toilets, sinks, bath tubs, and appliances.
- Any other construction or demolition debris that is non-hazardous and available for recycling or reuse.

15.32.100 Exemptions

A. Infeasibility exemption: Where there are practical difficulties involved in complying with the requirements of this Chapter, the Compliance Official may grant modifications for covered projects. Any request for an infeasibility exemption under this Section must be submitted in writing along with the submittal of the WRRP. In applying for an exemption, the burden is on the applicant to show infeasibility. The applicant shall indicate in the documentation the maximum amount of materials diversion that he or she asserts is feasible for the covered project to attain, and the circumstances that he or she asserts make it infeasible to fully comply with this Chapter.

The Compliance Official shall first find that a special individual reason makes compliance with this Chapter impractical and that modification is in conformance with the intent and purpose of this Chapter. The details of any action granting modification shall be recorded and entered in the WRRP by the Compliance Official.

An application for exemption shall be submitted in writing to the Compliance Official along with the WRRP and accompanied by a site plan of the project and stating the basis for the requested exemption. The Compliance Official shall allow the exemption if it is determined there is no feasible way to meet the requirements, taking into account:

1. Existing improvements, project conditions, and the feasibility of providing sufficient space to accommodate a recycling area to meet the requirements of this Ordinance.

2. Any hardship peculiar to the property (e.g., the property has an exceptional condition in terms of shape, size, topography, etc.)

If an applicant for a "Covered Project" identifies unique circumstances that the applicant believes make it infeasible to comply with the diversion requirement, the applicant shall indicate on the WRRP the maximum rate of diversion he or she believes is feasible for each material and the specific circumstances that he or she believes

make it infeasible to comply with the diversion requirement. If the exemption is granted, the applicant must still pay the administrative fee. The WRRP official shall return a copy of the WRRP to the applicant marked "Approved for Exemption." If the WRRP official determines that it is feasible for the applicant to partially meet the diversion requirement, he or she shall determine the maximum feasible diversion rate for each material and shall indicate this rate on the WRRP submitted by the applicant. The WRRP official shall return a copy of the revised WRRP to the applicant marked "Approved for Partial Exemption." The applicant shall be required to comply with all the provisions of this chapter based upon the revised WRRP.

B. Denial of exemption: If the WRRP official determines that it is possible for the applicant to meet the diversion requirement, he or she shall so inform the applicant in writing. The applicant must resubmit a WRRP in full compliance with this Chapter. If the applicant fails to resubmit the WRRP, or if the resubmitted WRRP does not comply with this Chapter, the WRRP official shall deny the WRRP in accordance with Section 15.32.060.

15.32.110 Appeals

An appeal of the decision of the Compliance Official may be made to an administrative hearing officer in accordance with the provisions of Chapter 1.26.

15.32.120 Enforcement

A. Penalties: Any applicant who violates any provision of this Chapter, including but not limited to noncompliance with a WRRP, shall be punishable by a fine that is equal to up to 5% of the project valuation, depending on the level of non-performance as determined by the Compliance Official. Projects that do not achieve diversion requirements established in an approved WRRP are subject to a fine commensurate with the actual diversion achieved:

1. 40-49% diversion = subject to 1% fine.
2. 30-39% diversion = subject to 2% fine.
3. 20-29% diversion = subject to 3% fine.
4. 10-19% diversion = subject to 4% fine.
5. 0-9% diversion = subject to 5% fine.

B. The City's enforcement of violations of this Chapter shall be in accordance with Title 1 of this Code.

15.32.130 Fine for Non-Performance

If an applicant has not received a determination of "substantial compliance" by the Compliance Official prior to issuance of a temporary certificate of occupancy, the Compliance Official may require (as a condition of issuance of a temporary certificate of occupancy) that the applicant post the fine (based on the calculation set forth in Section 15.32.120) and that the applicant obtain full or substantial compliance with this Chapter within a specified time. In the event the applicant posts the fine amount pursuant to this section, and the Compliance Official determines that the applicant has obtained timely full or substantial compliance with this Chapter, the Compliance Official shall return the posted fine to the Applicant in full, without interest, within 60 days.

The fine shall be forfeited either in its entirety (or portion thereof as established in Section 15.32.120(A)) for failure to comply with the requirements of this Chapter.

15.32.140 Removal of Unlawfully Placed Solid Waste Containers

A. Notice to Remove: The Compliance Official may cause the posting of a notice to remove, in a conspicuous place, on any solid waste container placed on any public or private property within the City which he/she considers a violation.

B. Nature of Violation: Notices to remove shall specify the nature of the violation and state that the solid waste container must be removed within twenty-four (24) hours or it may be removed and stored by the City, and the contents disposed of, at the expense of the owner of the container. The posting of the notice to remove constitutes constructive notice to the owner and user of the container of the requirement to remove the solid waste container.

C. Removal and Storage: If the solid waste container is not removed within twenty-four (24) hours after the notice to remove is posted, the Compliance Official may direct the removal and storage of the solid waste container and the disposal of its contents.

D. Claiming of Containers: If the identity of the owner of a solid waste container that has been removed by the City is known to the Compliance Official, the Compliance Official can notice the owner to claim the stored property. If the solid waste container is not claimed within ninety (90) days after removal and notice to the owner, or thirty (30) days after removal if the identity of the owner is unknown, the solid waste container and its contents are deemed abandoned property and may be disposed of accordingly.

E. Actual Notice: After a solid waste container has once been removed by the City pursuant to a notice to remove, the owner shall be deemed to have actual notice, including the prohibition of placement of solid waste containers by any person other than those exempted. In the event of a subsequent placement of a solid waste container owned by the same owner, the Compliance Official may immediately, without the posting of a notice to remove, direct the removal and storage of the unlawfully placed solid waste container and, in such case, can give notice to the owner to claim

the solid waste container. In such event, the owner is responsible to reimburse the City for the actual cost of removal, storage and disposal of its contents, which cost shall be paid by the owner before the solid waste container is returned to the owner. If the solid waste container is unclaimed after notice is mailed to the owner and the expiration of the period set forth, the solid waste container and its contents are deemed abandoned property and shall be disposed of accordingly.

F. Reimbursement/Liability of Costs: The owner of the solid waste container is responsible to reimburse the City for the actual cost of the removal, storage and disposal. All amounts due to the City for the cost of the removal, storage and disposal are paid before the solid waste container is returned to the owner. The costs incurred by the City for removal, storage and disposal shall constitute a debt owed to the City by the owner, who is liable therefore in an action by the City for the recovery of such amounts.

15.32.150 Containers for Collection of Recyclable Solid Waste Exempted

Nothing prohibits the placement of containers for the collection of recyclable solid waste sold or donated by the generator of such solid waste. If, however, the generator of the recyclable solid waste is required to pay monetary or non-monetary consideration for the collection, transportation, transfer, or processing of the recyclable solid waste, or for the use of containers for such solid waste, this exemption does not apply. The person providing containers for the collection of recyclable solid waste has the burden of showing that the recyclable solid waste was sold or donated in compliance with the exemption

15.32.160 Illegal Dumping

Illegal hauling and illegal dumping present dangers to the health, safety, welfare, public finances and quality of life of the citizens of the City of Napa. All mixed C&DD and unrecyclable C&DD, including that from sources other than covered projects, must be contained in a manner so as to prevent blowing or scattering. Anyone caught illegally dumping solid waste or C&DD in the City of Napa shall be subject to fines of up to $3,000 and any other enforcement actions authorized under Title 1 of this Code.

SECTION 2: Amendment. Napa Municipal Code Section 1.24.050 is hereby amended by adopting a new Subsection 1.24.050(C)(5), and renumbering former Subsections 1.24.050(C)(5) through 1.24.050(C)(9) to 1.24.050(C)(6) through 1.24.050(C)(10). (Note: Subsections 1.24.050(A), (B) and (D) are not amended by this ordinance; and Subsections 1.24.050(C)(1) through (4) are not amended by this ordinance.)

> "5. The actions required to correct the violation, including an order to abate the violation and prohibit the continuation or repeated occurrence of the violation. This shall include an identification of the time within which correction of the violation shall be commenced and completed."

SECTION 3: Amendment. Napa Municipal Code Section 1.24.060 is hereby amended by repealing the previous language of Subsection 1.24.060(A)(5), and adopting language to read as set forth below for a revised Subsection 1.24.060(A)(5) and a new Subsection 1.24.060(A)(6). (Note: Subsections 1.24.060(B), (C) and (D) are not amended by this ordinance; and Subsections 1.24.060(A)(1) through (4) are not amended by this ordinance.)

"5. The enforcement officer may impose an additional fine amount based on the criteria set forth in Subsection 1.24.090(A)(2).

6. The fines set forth in this Section 1.24.060 shall apply to a code violation whether or not the City issues an administrative citation or compliance order, and whether the City seeks enforcement in an administrative or judicial forum, or otherwise."

SECTION 4: Amendment. Napa Municipal Code Section 1.24.070 is hereby amended by repealing the previous language of Subsections 1.24.070(A) and (B), and adopting language to read as set forth below. (Note: Subsection 1.24.070(C) is not amended by this ordinance.)

"A. A person to whom an administrative citation is issued may request an administrative hearing within ten (10) days of the issuance of the administrative citation. Failure to timely request an administrative hearing in the manner required by this chapter results in a final order, and constitutes a waiver of the hearing and a failure to exhaust administrative remedies.

B. A request for an administrative hearing shall be made in writing and filed with the City Clerk, and shall state all grounds which the appellant wishes the City to consider. The request shall be accompanied by a deposit of the fines and enforcement costs identified in the administrative citation. Provided, however, a deposit is not required to be paid prior to the hearing if either: (1) the enforcement officer does not identify the requirement to pay the deposit as a part of the administrative citation or compliance order, or (2) the appellant establishes, to the satisfaction of the City Manager, that the appellant is unable to pay the amount of the deposit."

SECTION 5: Amendment. Napa Municipal Code Title 1 is hereby amended by adopting a new Chapter 1.26, "Appeals and Hearing Procedure for Administrative Determinations," to read as set forth below.

"Chapter 1.26

APPEALS AND ADMINISTRATIVE HEARING PROCEDURE FOR ADMINISTRATIVE DETERMINATIONS

Sections:

1.26.010 Applicability
1.26.020 Request for administrative hearing
1.26.030 Hearing procedure
1.26.040 Hearing officer's decision

1.26.010 Applicability

To the extent that any portion of this Code authorizes an appeal of an administrative determination, by filing a request for an administrative hearing, the provisions of this Chapter shall govern.

1.26.020 Request for administrative hearing

A. Any request for an administrative hearing to appeal an administrative determination pursuant to this Code (hereinafter "appeal") must be made in accordance with this Chapter. Any appeal must be in writing, accompanied by any required fees or charges, and submitted to the City Clerk. Any such appeal must be received by the City Clerk within ten (10) calendar days of the issuance of the administrative determination being appealed. The City Manager may postpone the obligation to pay required fees or charges, pending the conclusion of the appeal, if the appellant establishes to the satisfaction of the City Manager that the appellant is unable to pay the required fees or charges.

B. The letter of appeal must state (1) the specific administrative determination or action objected to (including an identification of the date on which the administrative determination was issued); (2) the action appellant requests the City to take; (3) all factual and legal grounds which the appellant wishes the City to consider as reasons for the appeal (such grounds to be identified by the appellant shall include, without limitation, any and all constitutional or statutory claims); and (4) the name, address and telephone number of appellant and any authorized representatives of the appellant.

C. Any administrative determination (that is subject to the appeal provisions of this Chapter) shall be final unless appealed pursuant to the requirements of this Chapter. Failure to timely request an administrative hearing, and/or to fully state all factual and legal grounds for the appeal, in the manner required by this Chapter constitutes a waiver of the appeal and a failure to exhaust administrative remedies.

D. Unless otherwise specified in this Chapter, any notices required by this Chapter shall be provided pursuant to Section 1.24.100.

1.26.030 Hearing Procedure

A. Selection of hearing officer. After the City Clerk's receipt of an appeal letter filed in accordance with this Chapter, the City Manager shall designate the hearing officer (pursuant to Section 1.16.060) to hear the appeal at an administrative hearing.

B. Notice of hearing. The hearing shall be conducted by the hearing officer on the date, time, and location specified in the written notice of hearing delivered by the City Manager to the appellant. The hearing date shall be set on the first available date

for the designated hearing officer, which may be based on a schedule of regularly available hearing dates established by the City Manager.

C. Continuances. The hearing officer may continue a hearing from time to time, and may request additional information from the City Manager or the appellant before issuing a decision.

D. Written reports. All documents provided by the City in support of the determination that is the subject of the appeal shall be accepted by the hearing officer as prima facie evidence of the facts stated in such documents. If the City submits any such documents to the hearing officer, then a copy of the documents shall be served on the appellant at least five days before the hearing.

E. The City Manager, and other representatives of the City may, but need not, appear and present evidence at the hearing.

F. Failure to appear. The failure of the appellant to appear at the hearing shall constitute a failure to exhaust his or her administrative remedies.

G. At the hearing. At the hearing, the appellant shall be given the opportunity to testify and to present evidence concerning the determination that is the subject of the appeal, including any evidence to show cause why the action the appellant is asking the City to take should be taken, and the appellant shall raise any and all legal and factual issues and claims concerning the determination under this Section that is the subject of the appeal. The hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might consider such admission improper in a civil action. The hearing officer may exclude irrelevant or unduly repetitious evidence.

1.26.040 Hearing officer's decision.

A. Decision. After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a written decision, based on the preponderance of evidence, to uphold or overturn the original determination that is the subject of appeal, including the findings on which the decision was made. If the determination is overturned, the hearing officer may remand the action to City staff with directions to modify the determination. The hearing officer shall send a copy of the decision to the appellant and to all relevant City staff.

B. Cost Recovery. The hearing officer's written decision shall include a determination regarding fees and charges owed by the appellant, as required by this Code (including Section 1.16.050). If the hearing officer finds, as a part of the hearing officer's written decision, that the City is the prevailing party, the City shall be entitled to its reasonable costs of defending the appeal.

C. Finality of Decision. The hearing officer's decision is final, and may not be appealed. The decision shall include information regarding the appellant's right to seek judicial review of the hearing officer's decision (pursuant to subsection 1.16.070).

SECTION 6: Amendment. Napa Municipal Code Section 3.04.050 is hereby amended by repealing the previous language of Subsections 3.04.050(C), (D), and (E), and adopting language to read as set forth below for new Subsections 3.04.050(C) and (D). (Note: Subsections 3.04.050(A) and (B) are not amended by this ordinance.)

"C. Any written determination made by the City Manager pursuant to this Section shall be final unless appealed pursuant to the requirements of this Section. Failure to file a timely appeal pursuant to this Section constitutes a waiver of the appeal and a failure to exhaust administrative remedies.

D. Any person aggrieved by a determination by the City Manager pursuant to this Section may appeal by filing a request for an administrative hearing within ten (10) days of the issuance of the City Manager's determination, in accordance with the provisions of Chapter 1.26."

SECTION 7: Amendment. Napa Municipal Code Chapter 5.04 is hereby amended by repealing the previous language of Section 5.04.060, and adopting language to read as set forth below for a new Section 5.04.060.

"5.04.060 Appeals

A. Any written determination made by the City Collector pursuant to this Chapter shall be final unless appealed pursuant to the requirements of this Section. Failure to file a timely appeal pursuant to this Section constitutes a waiver of the appeal and a failure to exhaust administrative remedies.

B. Any person aggrieved by a determination by the City Collector with respect to the issuance or refusal to issue a license, or with respect to the imposition of a tax, fee or penalty pursuant to this Chapter, may appeal by filing a request for an administrative hearing within ten (10) days of the issuance of the City Collector's determination, in accordance with the provisions of Chapter 1.26."

SECTION 8: Amendment. Napa Municipal Code Chapter 12.48 is hereby amended by repealing the previous language of Sections 12.48.160, 12.48.170, and 12.48.180, and adopting language to read as set forth below for a new Section 12.48.160.

"12.48.160 Appeals

A. Any written determination made by the Director pursuant to this Chapter shall be final unless appealed pursuant to the requirements of this Section. Failure to file a timely appeal pursuant to this Section constitutes a waiver of the appeal and a failure to exhaust administrative remedies.

B. Any person aggrieved by a determination by the Director pursuant to this Chapter may appeal by filing a request for an administrative hearing within ten (10) days of the issuance of the Director's determination, in accordance with the provisions of

Chapter 1.26. If the subject of the request for an administrative hearing involves expressive activity, upon written request of the appellant, the scheduling of the administrative hearing shall be expedited by the City Hearing Officer."

SECTION 9: Amendment. Napa Municipal Code Section 17.52.275 is hereby amended by repealing the previous language of Subsection 17.52.275(P)(4), and adopting language to read as set forth below. (Note: Subsections 17.52.275(A) through (O) are not amended by this ordinance; and Subsections 17.52.275(P)(1) through (3) are not amended by this ordinance.)

> "4. Except as otherwise provided in Subsection J(3) (authorizing the Director to make final decisions to select the preferred applicant) and Subsections P(2) and P(3) (for appeals to Chapters 1.24 and 17.72, respectively), any person aggrieved by a determination of the Director pursuant to this Section may appeal by filing a request for an administrative hearing within ten (10) days of the issuance of the Director's determination, in accordance with the provisions of Chapter 1.26. Any written determination made by the Director pursuant to this Section shall be final unless appealed pursuant to the requirements of this Section. Failure to file a timely appeal pursuant to this Section constitutes a waiver of the appeal and a failure to exhaust administrative remedies."

SECTION 10: Environmental Determination. The City Council hereby finds and determines that this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15308, which exempts actions taken to assure the maintenance, restoration, enhancement and protection of the environment, and where the regulatory process involves procedures for protection of the environment, and pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 11: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 12: Effective Date. This Ordinance shall become effective January 1, 2011.

City of Napa, a municipal corporation

MAYOR: Jill Techel

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA
COUNTY OF NAPA } SS:
CITY OF NAPA

I, Dorothy Roberts, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 5th day of October, 2010, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 19th day of October, 2010, by the following vote:

AYES: van Gorder, Inman, Mott, Krider, Techel

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: _____
Dorothy Roberts
City Clerk

Approved as to Form:

_____
Michael W. Barrett
City Attorney