

# Overview of Draft Ordinances to Assist Local Governments

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## Caveat:

The material contained in this presentation and the associated oral comments are not intended to be a definitive analysis of the subjects discussed. The audience is cautioned that neither the sponsoring group nor the presenter intends that reliance be placed upon these materials without confirming independent research by a lawyer licensed to practice in Iowa.

The FIVE (5) ordinance forms are designed to address five scenarios:

- **DECONSTRUCTION** of a building.
- **RELOCATION** of a building.
- **DEMOLITION** of a building, after **SALVAGE** efforts.
- **DEMOLITION** of a building, before or after **RECYCLING** efforts.
- **NEW CONSTRUCTION**, waste **MINIMIZATION**.

Please note that any reference in any of the ordinances to “C&DD” should be changed to “C&DW”, e.g., in the definitions of “reuse” and “salvage.”

# DECONSTRUCTION of a building.

- “Deconstruction” means the **careful dismantling** of buildings and structures in order to **salvage** and **recycle** as much material as possible.
- The building owner takes primary if not exclusive responsibility for **salvage** and **recycling** efforts.

# RELOCATION of a building.

- “RELOCATION” means **moving** a building from its existing location and to a new location **to preserve and continue to use the building** for any purpose.
- The building owner takes primary if not exclusive responsibility for **salvage** and **recycling** efforts (e.g., old foundation, remodeling waste, etc.).

# DEMOLITION of a building, after SALVAGE efforts.

- “SALVAGE” means the **controlled removal** of C&DW for the purpose of recycling, reuse or storage for later recycling or reuse.
- Building owner permits **others** to remove materials for **salvage** prior to demolition.

# DEMOLITION of a building, before or after RECYCLING efforts.

- “RECYCLING” means the process of sorting, cleansing, treating and reconstitution material that would otherwise become solid waste, and returning them to the economic mainstream.
- Building owner permits others to remove materials for recycling before or after demolition.

# NEW CONSTRUCTION, waste MINIMIZATION.

- Owners and builders of **new construction** are incented to **minimize waste during the construction process.**

# WHY five (5) ordinances? FLEXIBILITY and ADAPTABILITY to individual jurisdictional circumstances...

- For most jurisdictions, buildings are “relocated” so infrequently that it is unnecessary to address the matter.
- In other jurisdictions, new construction may be so infrequent that new construction waste is not a problem.
- In still other jurisdictions, a “salvage” market may exist, but a viable “recycling” market may not.
- Any two or more of the ordinances could be combined into a single ordinance.

- Several features are common to some or all of the ordinances.
- For illustration, I will discuss the major features of the **DEMOLITION/SALVAGE** ordinance, but my comments should be understood to apply to similar provisions in the first four (4) ordinances.
- The fifth (5<sup>th</sup>) ordinance dealing with **NEW CONSTRUCTION** waste, is different from the others and will be discussed separately.

With respect to all five (5) ordinances, it is important to remember this caveat:

These model ordinances should not be adopted without confirming independent legal research by an attorney licensed to practice law in Iowa. Local circumstances will vary significantly from jurisdiction to jurisdiction. Consideration of such ordinances calls for careful analysis and determination of a number of critical policy issues by the governing body of the jurisdiction.

# Section 1: FINDINGS

The purpose of the “findings” section is to establish the historical, factual and policy foundation for the ordinance, e.g.:

- The State has mandated solid waste reduction. Section 1(c)
- Construction and demolition waste (C&DW) is a particular problem because it consumes an inordinate amount of space, resists compaction, and constitutes increased risk to site and worker safety. Section 1(e):

## Section 1: FINDINGS: (CONTINUED):

- Proper management of C&DW achieves a number of important objectives. Section 1(f)
  - State and [city] [county] achieve solid waste reduction,
  - facility resources conserved,
  - useful life of the facility is extended,
  - site and worker safety is improved, and
  - tonnage fees payable to the State of Iowa are minimized, thus reducing the costs of facility operational costs and moderating fees charged for use of the facility.

## Section 1: FINDINGS: (CONTINUED):

- Benefit of solid waste reduction outweighs the costs incurred in salvage and recycling. Section 1(g):
- Enforcement costs incurred by the jurisdiction must be recovered through fees, not taxes. Section 1(h):
- Performance Security Deposits, coupled with reduced landfill fees, will foster compliance with both a carrot and a stick. Sections 1(i)&(j):

- THROUGHOUT THE ORDINANCES, DOLLAR AMOUNTS, SQUARE FOOTAGE AMOUNTS, PERCENTAGES AND OTHER SUCH FACTORS ARE SHOWN.
- THESE FACTORS MUST BE ESTABLISHED TAKING INTO CONSIDERATION LOCAL CONDITIONS.
- "ONE SIZE DOES NOT FIT ALL."

## Section 2: DEFINITIONS:

- **“Building”** for purposes of this ordinance means a structure for residential, commercial or agricultural use with at least 1000 square feet of interior space on any single level or floor.

## Section 2: DEFINITIONS: (CONTINUED):

- "Construction and demolition waste"  
(hereinafter referred to as "C&DW")
  - Common construction materials, and trees.
  - NOT hazardous and special waste  
(including but not limited to asbestos and lead-based paint) in quantities or conditions subject to special handling and safety regulations under state and federal laws.
  - Certification requirement.
  - Reduced landfill fees for C&DW.

## Section 2: DEFINITIONS:(CONTINUED):

- **“Conversion Rate”** means the rate set forth in the standardized Conversion Rate Table approved by the [city] [county] pursuant to this ordinance for use in estimating the volume or weight of materials identified in a waste management plan.

## Section 2: DEFINITIONS: (CONTINUED):

- **“Divert”** means to salvage or recycle C&DW. Disposal of C&DW at a solid waste disposal facility with special provisions which limit the site to disposal of construction and demolition waste shall not constitute diversion.

## Section 2: DEFINITIONS: (CONTINUED):

- **“Diversion requirement”** means the diversion of at least fifty (50) percent of the total C&DW generated by a project via salvage or recycling, unless the applicant has been granted an unfeasibility exemption pursuant to Section 8 of this ordinance, in which case the diversion requirement shall be the maximum feasible diversion rate established by the WMP compliance official for the project.

## Section 2: FUNDING THE PROGRAM

- "C&DW management application and processing fee" (hereinafter referred to as "C&DWMAP fee") means the fee established from time to time by the [city] [county] in an amount reasonably calculated to recover the costs of administration of this ordinance. The C&DWMAP fee schedule established by the [city] [county] may reflect a sliding scale based on the weight or volume of C&DW reflected in the applicant's waste management plan.

## Section 2: FUNDING THE PROGRAM (CONTINUED):

"C&DWMAP fee"

The purpose of this fee is to make the program **fiscally self-sufficient**, so that tax money does not have to support the administrative costs of the program.

## Section 2: INCENTING COMPLIANCE

- **“Performance security deposit” (“PSD”)** means a sum of money to be deposited with the [city] [county], by cash, certified check or money order, in an amount established from time to time by the [city] [county] reasonably calculated to offset the adverse consequences for facility resources of the applicant's failure, in whole or in part, to fulfill the applicant's waste management plan as defined below. ...

## Section 2: INCENTING COMPLIANCE (CONTINUED)

- "Performance security deposit" ("PSD")

...The PSD fee schedule(s) established by the [city] [county] may reflect a sliding scale based on the weigh or volume of C&DW reflected in the applicant's waste management plan. PSD schedules for Covered projects and noncovered projects need not be the same. ...

## Section 2: INCENTING COMPLIANCE (CONTINUED)

- **“Performance security deposit” (“PSD”)**

... The PSD shall be in addition to the C&DWMAP fee any other fees associated with demolition of a building, and shall be paid by the applicant prior to commencement of any activity associated with demolition of a building. Upon the effective date of this ordinance, the PSD shall be \$10.00 per thousand pounds, or the equivalent volume, of C&DW resulting from the building demolition. <sup>[FOOTNOTE]</sup>

Section 3: Deconstruction, relocation or demolition "COVERED PROJECTS" are all projects ...

producing 1,000 pounds or more, or an equivalent volume, of C&DW.

New construction "COVERED PROJECTS" are projects ... (Section 2 of Ordinance #5 Minimizing Future C&DW From New Construction)

- consisting of one or more buildings for residential, commercial or agricultural use comprising, individually or collectively, at least 10,000 square feet of interior space.

## Section 4: Application Requirements For Waste Management Plan (WMP)\*

- Estimated volume or weight of ALL project C&DW.
- Estimated volume or weight of C&DW that can be diverted.
- Salvage or recycling vendor or facility.
- Estimated volume or weight of C&DW that will be landfilled.

\*Additional requirements for new construction; see Section 3(a) of Ordinance #5.

# Section 5: Approval Requirements For Waste Management Plan (WMP)

- All information required in application under Section 4 has been provided.
- At least **50% of C&DW will be diverted.**
- **PSD** has been paid.

# Section 5: DEMOLITION SALVAGE AND RECYCLING OPPORTUNITIES FOR THIRD PARTIES

- Contractors and Building Owners involved in building demolition must provide opportunities for **third party salvage and recycling**.
- **Credit on diversion requirement** is given for material so diverted.
- Material may be sold to owner/contractor's profit.
- **10 days published notice** and **mailed notice** of opportunities for salvage/recycling.

# Section 4/6/7\*: Proof of Compliance With Diversion Requirement

- Compliance must be documented within **30 days** of project completion.
- **50%** diversion requirement.

\*Section 4 in New Construction Ordinance; Section 6 in Deconstruction and Relocation Ordinances; Section 7 in Demolition Ordinances

# Section 4/6/7\*: Proof of Compliance With Diversion Requirement

- Compliance determination:
  - "Full Compliance" results in 100% refund of PSD.
  - "Good Faith Effort" results in 1-99% refund of PSD.
  - "Non-Compliance" results in forfeiture of PSD.
- PSD fees forfeited in whole or in part are **paid over to the waste disposal facility** to offset the adverse consequences on facility resources of compliance failure.

# Section 4/6/7\*: Proof of Compliance With Diversion Requirement

- Documentation of compliance determinations is critical.

\*Section 4 in New Construction Ordinance; Section 6 in Deconstruction and Relocation Ordinances; Section 7 in Demolition Ordinances

# Section 5/7/8\*: Unfeasibility Exemption

- “UNIQUE CIRCUMSTANCES” make it unfeasible to meet diversion requirement.
- **Written application for exemption** setting fourth unique circumstances.
- Statement of “**feasible**” diversion goal.
- **Meeting** with WMP compliance official.
- **Decision** by WMP compliance official (see previous note about good documentation)

\*Section 5 in New Construction Ordinance; Section 7 in Deconstruction and Relocation Ordinances; Section 8 in Demolition Ordinances

## Section 6/8/9\*: Appeals

- Any adverse decision by WMP compliance official can be taken to city council (or board of supervisors for county ordinances).
- Written appeals filed with city clerk (or county auditor for county ordinances) **within five (5) days of adverse decision.**
- Written response by WMP compliance official **within three (3) days of appeal.**

\*Section 6 in New Construction Ordinance; Section 8 in Deconstruction and Relocation Ordinances; Section 9 in Demolition Ordinances

## Section 6/8/9\*: Appeals

- Hearing must occur within 20 days of appeal.
- Necessary components of written appeal document:
  - statement of decision appealed from;
  - specification of errors made by WMP compliance official;
  - written summary of oral and written testimony appealing party will introduce at hearing, including names and addresses of witnesses;
  - copies of documents appealing party will introduce at hearing;
  - Description of relief requested.

## Section 6/8/9\*: Appeals

- Necessary components of WMP compliance official's written response:
  - reasons for making the decision appealed from (here's where your good documentation will pay off);
  - written summary of oral and written testimony WMP compliance official will introduce at hearing, including names and addresses of witnesses;
  - copies of documents WMP compliance official will introduce at hearing;

## Section 6/8/9\*: Appeals

- Hearing must occur within 20 days of appeal.
  - **Within five (5) days of appeal**, council or board must give written and published notice of hearing.
  - Rules of evidence and procedure shall be as provided in Chapter 17A, Code of Iowa (the "Administrative Procedures Act").
  - Appealing party may be represented by counsel at appealing party's expense.
  - WMP compliance official shall be represented by city attorney, county attorney, or special counsel at jurisdiction's expense.

# Section 7/9/10\*: Enforcement

- Optional modes of enforcement:
  - **Civil action** including action for injunctive relief.
  - **Municipal infraction** within the meaning of §364.22, Code of Iowa.
- City ordinances enforced by city attorney.
- County ordinances enforced by county attorney.

\*Section 7 in New Construction Ordinance; Section 9 in Deconstruction and Relocation Ordinances; Section 10 in Demolition Ordinances

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- This ordinance is **proactive** rather than **reactive**.
- The goals are:
  - to **PREVENT** or **MINIMIZE** the amount of C&DW that is produced by new construction, and
  - **MAXIMIZE** the use of previously recycled and salvaged materials in new construction.

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- Applies to a new construction consisting of one or more buildings for residential, commercial or agricultural use comprising, individually or collectively, **at least 10,000 square feet.**

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- PSD set at \$10.00 per 1000 square feet of interior space of all buildings combined.

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- Additional requirements exist for the WMP:
  - estimated volume or weight of C&DW, by material type, to be generated;
  - maximum volume or weight that can be diverted vial salvage or recycling;
  - vendor or facility designated to receive diverted materials;
  - estimated volume or weight of C&DW to be landfilled;

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- Additional requirements exist for the WMP (CONTINUED):
  - a site plan showing intended flow of salvageable and recyclable material from each portion of the development to salvage, recycling or trash enclosures;
  - identification of collection practices;
  - list of materials targeted for salvage or recycling;

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- Additional requirements exist for the WMP (CONTINUED):
  - construction plan showing use of recycled or salvaged materials in the new construction (e.g. recycled brick, tile, insulation made from recycled plastics);
  - contractor's estimated cost of compliance and revenue to be derived from sale of salvaged or recycled materials;

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- Additional requirements exist for the WMP (CONTINUED):
  - contractor's certification that at least 50% of new construction waste would have been subject to disposal at the facility but for compliance with the WMP.

# ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION WASTE

- Similarities to other ordinances:
  - Definitions;
  - payment of C&DWMAP fee;
  - compliance determination process,
  - unfeasibility exemption,
  - appeal and
  - enforcement provisions.