

1 (SEAL)

2

3 ATTEST:

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8 _____
[Typed name], [City] [Board] Clerk

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13 APPROVED AS TO FORM:

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17 _____
[Typed name], [City] [County] Attorney

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19 I, _____, [City Clerk] [Board Secretary] of the
20 [City of] [County of] _____, Iowa, do hereby certify that the
21 foregoing ORDINANCE was passed and approved by the [City Council of the City of] [Board of
22 Supervisors of the County of] _____, Iowa, on the
23 _____ day of _____, 200____, and was published in the
24 _____, a newspaper of general
25 circulation in the said [City] [County] of _____ on the
26 _____ day of _____, 200____.

27

28 Dated this _____ day of _____, 200____.

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33 _____
[City Clerk] [Board Secretary]

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1 TITLE _____, CHAPTER _____, ARTICLE _____, CODE OF
2 ORDINANCES, [CITY] [COUNTY] OF _____,
3 “ORDINANCE FOR MANAGING CONSTRUCTION AND DEMOLITION WASTE
4 CREATED BY **DECONSTRUCTION OF A BUILDING**”
5

6 Section 1. Findings

- 7 a. On the _____ day of _____, _____, the [City
8 of] [County of] _____ (hereinafter [“city”] [“county”])
9 became a member of the _____ Solid Waste Agency
10 (“Agency”), operating the sanitary disposal project known as
11 _____”the
12 facility” pursuant to a comprehensive plan known as
13 _____ (“the plan”).
- 14 b. Pursuant to the provisions of §455B.301A, Iowa Code, it is the solid waste
15 disposal public policy of the State of Iowa to promote, in descending
16 hierarchy, “...volume reduction at the source, ...recycling and
17 reuse...[and]... other approved techniques of solid waste management
18 including, but not limited to, combustion with energy recovery,
19 combustion for waste disposal, and disposal in sanitary landfills.”
- 20 c. Pursuant to the provisions of §455B.306, Iowa Code, “All cities and
21 counties shall ... establish and implement a comprehensive solid waste
22 reduction program for its residents.”
- 23 d. Pursuant to the provisions of §455B.310, the tonnage fee imposed on the
24 operator of a sanitary landfill by the State of Iowa may be reduced in
25 effect by successful solid waste reduction efforts, and may be eliminated
26 altogether with respect to “Solid waste disposal facilities with special
27 provisions which limit the site to disposal of construction and demolition
28 waste... .”
- 29 e. Construction and demolition waste constitutes a significant portion of the
30 total quantity of solid waste disposed of at the facility, consumes an
31 inordinate amount of space, resists compaction, and constitutes increased
32 risk to site and worker safety.
- 33 f. Proper management of construction and demolition waste created by
34 deconstruction of buildings:
- 35 1) help the state and [city] [county] achieve solid waste reduction,
 - 36 2) conserve facility resources,
 - 37 3) extend the useful life of the facility,
 - 38 4) improve site and worker safety, and
 - 39 5) minimize tonnage fees payable to the State of Iowa, thus reducing
40 the costs of facility operational costs and moderating fees charged
41 for use of the facility.
- 42 g. Volume reduction at the source may in some respects add modestly to the
43 cost of deconstruction of a building and in other respects may make
44 possible some cost recovery and cost reduction; notwithstanding these
45 considerations, it is necessary in order to protect the public health, safety
46 and welfare that this ordinance be adopted.

- 1 h. The [city] [county] will incur significant costs in the administration of this
- 2 ordinance, which costs must be recovered by a reasonable application and
- 3 processing fee.
- 4 i. It is appropriate to require owners or contractors engaged by owners for
- 5 the purpose of deconstructing a building to make a performance security
- 6 deposit with the [city] [county] reasonably calculated to offset the adverse
- 7 consequences for facility resources of the applicant's failure, in whole or
- 8 in part, to fulfill the applicant's waste management plan. In the event
- 9 applicant fulfills applicant's waste management plan in whole or in part,
- 10 all or an appropriate portion of the performance security deposit should be
- 11 rebated in recognition of all or part of the adverse consequences for
- 12 facility resources avoided by such fulfillment.
- 13 j. Construction and demolition waste remaining after satisfactory diversion
- 14 should be subject to reduced fees and charges at the facility.

15 Section 2. Definitions. For purposes of this ordinance, the following definitions shall apply:

- 16 a. "Applicant" means any person, firm, limited liability company,
- 17 association, partnership, political subdivision, government agency,
- 18 municipality, industry, public or private corporation, or any other entity
- 19 whatsoever who applies to the [city] [county] for a building deconstruction
- 20 permit to deconstruct a building within the [city] [county].
- 21 b. "Building" for purposes of this ordinance means a structure for residential,
- 22 commercial or agricultural use with at least 1000 square feet¹ of interior
- 23 space on any single level or floor.
- 24 c. "Building deconstruction permit" means a permit issued by the [city]
- 25 [county] in accordance with this ordinance upon payment of the required
- 26 fee and deposit; no building deconstruction shall be commenced by a
- 27 building owner or anyone acting on behalf of a building owner prior to
- 28 receipt of a building deconstruction permit.
- 29 d. "Construction and demolition waste" (hereinafter referred to as "C&DW")
- 30 means waste building materials including wood, metals and rubble which
- 31 result from construction, demolition, deconstruction or relocation of
- 32 structures. Such waste shall also include trees cleared from a project site.
- 33 Consistent with the legal duty of every waste generator under state and
- 34 federal law to identify, specially handle and dispose of hazardous and
- 35 special waste (including but not limited to asbestos and lead-based paint),
- 36 C&DW shall not contain hazardous and special waste (including but not
- 37 limited to asbestos and lead-based paint) in quantities or conditions subject
- 38 to special handling and safety regulations under state and federal laws. To
- 39 be deemed C&DW, material shall be certified as such by the applicant in
- 40 writing in the following form: "I hereby certify that the C&DW subject to
- 41 the permit applied for does not contain hazardous and special waste
- 42 (including but not limited to asbestos and lead-based paint) in quantities or
- 43 conditions subject to special handling and safety regulations under state
- 44 and federal laws." Certified C&DW remaining after satisfactory diversion

¹ This figure must be established based on local considerations, particularly the public or private resources available in the community for recycling.

1 under the provisions of this ordinance shall be subject to such reduced fees
2 and charges at the facility, if any, as the facility may determine.

- 3 e. “C&DW management application and processing fee” (hereinafter
4 referred to as “C&DWMAP fee”)² means the fee established from time to
5 time by the [city] [county] in an amount reasonably calculated to recover
6 the costs of administration of this ordinance. The C&DWMAP fee
7 schedule established by the [city] [county] may reflect a sliding scale
8 based on the weight or volume of C&DW reflected in the applicant's
9 waste management plan.³
- 10 f. “Contractor” means any person or entity holding, or required to hold, a
11 contractor's license of any type under the laws of the state, city or county,
12 or who performs (whether as contractor, subcontractor, owner-builder, or
13 otherwise) any deconstruction, construction, deconstruction, demolition,
14 remodeling, renovation, or landscaping service relating to buildings or
15 accessory structures.
- 16 g. “Conversion Rate” means the rate set forth in the standardized Conversion
17 Rate Table approved by the [city] [county] pursuant to this ordinance for
18 use in estimating the volume or weight of materials identified in a waste
19 management plan.⁴
- 20 h. “Covered project” shall have the meaning set forth in Section 3 of this
21 ordinance.
- 22 i. “Deconstruction” means the careful dismantling of buildings and
23 structures in order to salvage and recycle as much material as possible.
- 24 j. “Divert” means to salvage or recycle C&DW. Disposal of C&DW at a
25 solid waste disposal facility with special provisions which limit the site to
26 disposal of construction and demolition waste shall not constitute
27 diversion.
- 28 k. “Diversion requirement” means the diversion of at least fifty (50)
29 percent⁵ of the total C&DW generated by a project via salvage or
30 recycling, unless the applicant has been granted an unfeasibility exemption
31 pursuant to Section 7 of this ordinance, in which case the diversion
32 requirement shall be the maximum feasible diversion rate established by
33 the WMP compliance official for the project.

² The C&DWMAP fee (and the performance security deposit hereinafter referred to) is authorized (for cities) by §384.84 as a “solid waste disposal” rate or charge, and must be established in a sufficient amount to help “...produce gross revenues at least sufficient to pay the expenses of operation and maintenance...” of the facility. Like all such fees and charges, after adoption it must be “...published in the same manner as an ordinance.” The C&DWMAP fee (and the performance security deposit hereinafter referred to) is authorized (for counties) by §331.465(1)(a). *See also* §331,461(2)(b). If the city or county adopting this ordinance is not the operator of the facility, but participates only as a member of the 28E entity that operates the facility, provision should be made to properly allocate C&DWMAP fee proceeds between the city or county collecting the fee and the facility depending upon the respective administrative burdens of each in the administration of the ordinance. As will all such fees and charges, the C&DWMAP fee and PSD should be based on reasonable cost accounting, and periodically adjusted to account for inflation or other factors.

³ A sliding scale is appropriate for the reason that more administrative supervision is involved for large projects than for small projects.

⁴ These standards must be developed on a rational and practical basis.

⁵ See footnote #1.

- 1 l. “Noncovered project” shall have the meaning set forth in Section 3 of this
- 2 ordinance.
- 3 m. “Performance security deposit” (hereinafter “PSD” means a sum of money
- 4 to be deposited with the [city] [county], by cash, certified check or money
- 5 order, in an amount established from time to time by the [city] [county]
- 6 reasonably calculated to offset the adverse consequences for facility
- 7 resources of the applicant's failure, in whole or in part, to fulfill the
- 8 applicant's waste management plan as defined below. The PSD fee
- 9 schedule(s) established by the [city] [county] may reflect a sliding scale
- 10 based on the weigh or volume of C&DW reflected in the applicant's waste
- 11 management plan. PSD schedules for covered projects and noncovered
- 12 projects need not be the same. The PSD shall be in addition to the
- 13 C&DWMAP fee any other fees associated with deconstruction of a
- 14 building, and shall be paid by the applicant prior to commencement of any
- 15 activity associated with deconstruction of a building. Upon the effective
- 16 date of this ordinance, the PSD shall be \$10.00⁶ per thousand pounds, or
- 17 the equivalent volume, of C&DW resulting from building deconstruction.
- 18 n. “Project” means any activity associated with the deconstruction of a
- 19 building.
- 20 o. “Recycling” means the process of collecting, sorting, cleansing, treating,
- 21 and reconstituting materials that would otherwise become solid waste, and
- 22 returning them to the economic mainstream in the form of raw material for
- 23 new, reused, or reconstituted products which meet the quality standards
- 24 necessary to be used in the marketplace.
- 25 p. “Reuse” means further or repeated use of C&DD,
- 26 q. “Salvage” means the controlled removal of C&DD from a permitted
- 27 building or demolition site for the purpose of recycling, reuse, or storage
- 28 for later recycling or reuse.
- 29 r. “Waste management plan” (hereinafter “WMP”) means a completed
- 30 WMP form, approved by the [city] [county] for the purpose of compliance
- 31 with this ordinance, submitted by the applicant for any covered or
- 32 noncovered project.
- 33 s. “WMP compliance official” means the designated [facility] [city] [county]
- 34 staff person(s) authorized and responsible for implementing this
- 35 ordinance.⁷

36 Section 3. Threshold for covered projects.

- 37 a. All projects are subject to the payment of a PSD and C&DWMAP fee and
- 38 the filing of a WMP. “Non-covered projects” shall be subject only to
- 39 provisions of this ordinance specifically made applicable to them.
- 40 “Covered projects” shall be subject to all provisions of this ordinance.
- 41 b. “Covered projects” are:

⁶ See footnote 1.

⁷ The identity of the designated WMP compliance official will vary from jurisdiction to jurisdiction depending on individual circumstances. The position could be filled by the director or an employee of the facility, the building official of a city or county, or some other officer of a city or county. In any event, the activities of the WMP compliance official must be coordinated with the activities of the city or county office that issues construction, building or demolition permits.

- 1) All building deconstruction projects within the [city] [county] producing 1,000⁸ pounds or more, or an equivalent volume, of C&DW (“covered projects”) shall comply with this ordinance. Failure to comply with any of the terms of this ordinance shall subject the applicant and the owner to the full range of enforcement mechanisms set forth hereinafter. Applicants of covered projects shall divert at least fifty (50) percent⁹ of all project-related C&DW. Applicants that meet this diversion goal may present proof of compliance and upon making a showing satisfactory to the WMP compliance official shall be entitled to a rebate of up to one hundred (100) percent the PSD.
- 2) Noncovered projects: Applicants for building deconstruction projects within the [city] [county] producing less than 1,000 pounds, or an equivalent volume, of C&DW (“noncovered projects”) shall be relieved of the obligation to prepare and submit a WMP, but shall be informed by the [city] [county] of currently available diversion opportunities and the economic and environmental advantages of diversion, and encouraged to divert the maximum amount of all project-related C&DW. Non-covered project applicants may elect to file a WMP showing diversion of at least twenty-five (25) percent¹⁰ of all project-related C&DW. Applicants that meet this diversion goal may present proof of compliance and upon making a showing satisfactory to the WMP compliance official shall be entitled to a rebate of up to one hundred (100) percent of the PSD.
- 3) [City] [County]-Sponsored projects: All [city] [county]-sponsored building deconstruction projects producing 1,000 pounds or more, or an equivalent volume, of C&DW shall be considered “covered projects” for the purposes of this ordinance, and the [city] [county] shall submit a waste management plan to the WMP compliance official prior to beginning any building deconstruction and shall be subject to all applicable provisions of this ordinance.

c. Compliance as a Condition of Approval: Compliance with the provisions of this ordinance shall be listed as a condition of approval on any building, demolition or similar permit issued in connection with a covered project.

Section 4. Application for permit, submission of WMP, and payment of C&DWMAP fee.

- a. WMP Forms: Applicants for a building deconstruction permit involving any covered project shall complete and submit a waste management plan (“WMP”), on a WMP form approved by the [city] [county] for this purpose as part of the application packet for the building deconstruction permit. The completed WMP shall indicate all of the following:
 - 1) the estimated volume or weight of project C&DW, by materials type, to be generated;

⁸ See footnote 1.
⁹ See footnote 1.
¹⁰ See footnote 1.

- 2) the maximum volume or weight of such materials that can feasibly be diverted via salvage or recycling;
 - 3) the vendor or facility that the applicant proposes to use to collect or receive that material; and
 - 4) the estimated volume or weight of C&DW that will be landfilled.
- b. Calculating volume and weight of C&DW: In estimating the volume or weight of materials identified in the WMP, the applicant shall use the standardized Conversion Rates approved by and on file with the facility for this purpose.¹¹
- c. The C&DWMAP fee payable with the application shall be in addition to any other fees associated with deconstruction of a building, and shall be paid prior to commencement of any activity associated with deconstruction of a building.

Section 5. Review of WMP

- a. Approval:
- 1) Notwithstanding any other provision of this ordinance, no building or demolition permit shall be issued for any covered project unless and until the WMP compliance official has approved the WMP. Approval shall not be required, however, where an emergency demolition is required to protect public health or safety.
 - 2) The WMP compliance official shall only approve a WMP if the WMP compliance official first determines that all of the following conditions have been met:
 - a) the WMP provides all of the information set forth in Section 4 of this ordinance;
 - b) the WMP indicates that at least fifty (50) percent¹² of all C&DD generated by the project will be diverted; and
 - c) the applicant has submitted an appropriate Performance Security Deposit.
 - 3) Upon approval, the WMP compliance official shall mark the WMP “approved”, return a copy of the WMP to the applicant, and notify the [city] [county] official responsible for issuing construction, building or demolition permits that the WMP has been approved.
- b. Nonapproval:
- 1) If the WMP compliance official determines that the WMP is incomplete or fails to indicate that at least fifty (50) percent of all C&DD generated by the project will be diverted, the WMP compliance official shall either:
 - a) Return the WMP to the applicant marked “denied”, including a statement of reasons, and so notify the [city] [county] official responsible for issuing construction, building or demolition permits who shall then immediately stop processing the construction, building or demolition permit application, or

¹¹ See footnote 4.

¹² See footnote 1.

- 1 b) Return the WMP to the applicant marked “further
2 explanation required,” and notify the [city] [county] official
3 responsible for issuing construction, building or demolition
4 permits that the WMP has not been approved

5 Section 6. Compliance With WMP

- 6 a. Compliance documentation: Within 30 days after the completion of any
7 covered project, the applicant shall submit to the WMP compliance
8 official documentation that it has met the diversion requirement for the
9 project. The diversion requirement shall be that the applicant has diverted
10 at least fifty (50) percent of the total C&DD generated by the project via
11 salvage or recycling, unless the applicant has been granted an unfeasibility
12 exemption pursuant to Section 7 of this ordinance, in which case the
13 diversion requirement shall be the maximum feasible diversion rate
14 established by the WMP compliance official for the project. This
15 documentation shall include all of the following:
16 1) Receipts from the vendor or facility which collected or received
17 each material showing the actual weight or volume of that
18 material;
19 2) A copy of the previously approved WMP for the project adding the
20 actual volume or weight of each material diverted and landfilled;
21 3) Any additional information the applicant believes is relevant to
22 determining its efforts to comply in good faith with this ordinance.
23 b. Weighing of wastes: Applicants shall make reasonable efforts to ensure
24 that all C&DD diverted or landfilled are measured and recorded using the
25 most accurate method of measurement available. To the extent practical,
26 all C&DD shall be weighed by measurement on scales at applicant’s cost.
27 Such scales shall be in compliance with all regulatory requirements for
28 accuracy and maintenance. For C&DD not amenable to weighing due to
29 small size or other considerations, a volumetric measurement shall be
30 used. For conversion of volumetric measurements to weight, the applicant
31 shall use the standardized Conversion Rates approved by the [city]
32 [county] for this purpose.
33 c. Determination of compliance and release of PSD:¹³ The WMP compliance
34 official shall review the compliance documentation submitted and
35 determine whether the applicant has complied with the diversion
36 requirement, as follows:
37 1) Full compliance: If the WMP compliance official determines that
38 the applicant has fully complied with the diversion requirement
39 applicable to the project, the WMP compliance official shall cause
40 the full PSD to be released to the applicant.
41 2) Good faith effort to comply: If the WMP compliance official
42 determines that the diversion requirement has not been achieved,

¹³ The administrative decisions of the WMP compliance official called for in this section should always be documented and consistent from case to case. The easiest way for an applicant to challenge and appeal a decision by the WMP compliance official is to claim that the decision is inconsistent if not discriminatory. Good records of consistent application of the law are always the best defense.

1 the WMP compliance official shall determine on a case-by-case
2 basis whether the applicant has made a good faith effort to comply
3 with this ordinance. In making this determination, the WMP
4 compliance official shall consider the availability of markets for
5 the C&DD landfilled, the size of the project, and the documented
6 efforts of the applicant to divert C&DD. If the WMP compliance
7 official determines that the applicant has made a good faith effort
8 to comply with this ordinance, the WMP compliance official shall
9 release the PSD, or a portion thereof, to the applicant. Any portion
10 of the PSD not released to the applicant shall be forfeited to the
11 facility to offset the adverse consequences for facility resources of
12 the applicant's failure, in whole or in part, to fulfill the applicant's
13 waste management plan.

- 14 3) Noncompliance: If the WMP compliance official determines that
15 the applicant has not made a good faith effort to comply with this
16 ordinance, or if the applicant fails to submit the required
17 compliance documentation within the required time period, then
18 the PSD shall be forfeited.

19 Section 7. Unfeasibility exemption

- 20 a. Application: If an applicant for a covered project experiences unique
21 circumstances that the applicant believes make it unfeasible to comply
22 with the diversion requirement, the applicant may apply for an exemption
23 at the time that the applicant submits the WMP required under Section 4
24 of this ordinance. The applicant shall indicate on the WMP the maximum
25 rate of diversion the applicant believes is feasible for each material and the
26 specific circumstances that the applicant believes make it unfeasible to
27 comply with the diversion requirement.
- 28 b. Meeting with WMP compliance official: The WMP compliance official
29 shall review the information supplied by the applicant and shall meet with
30 the applicant to discuss possible ways of meeting the diversion
31 requirement. Upon request of the [city] [county], the WMP compliance
32 official may request that staff from the facility attend this meeting or may
33 require the applicant to request a separate meeting with facility staff.
34 Based on the information supplied by the applicant and, if applicable, the
35 facility, the WMP compliance official shall determine whether it is
36 possible for the applicant to meet the diversion requirement.
- 37 c. Granting of Exemption: If the WMP compliance official determines that it
38 is unfeasible for the applicant to meet the diversion requirement due to
39 unique circumstances, the WMP compliance official shall determine the
40 maximum feasible diversion rate for each material and shall indicate this
41 rate on the WMP submitted by the applicant. The WMP compliance
42 official shall return a copy of the WMP to the applicant marked “approved
43 for unfeasibility exemption” and notify the [city] [county] official
44 responsible for issuing construction, building or demolition permits that
45 the WMP has been approved.

1 d. Denial of exemption: If the WMP compliance official determines that it is
2 possible for the applicant to meet the diversion requirement, the WMP
3 compliance official shall so inform the applicant in writing. The applicant
4 shall have 30 days to resubmit a WMP form in full compliance with
5 Section 4 of this ordinance. If the applicant fails to resubmit the WMP, or
6 if the resubmitted WMP does not comply with Section 4 of this ordinance,
7 the WMP compliance official shall deny the WMP in accordance with
8 Section 6 of this ordinance, and notify the [city] [county] official
9 responsible for issuing construction, building or demolition permits that
10 the WMP has not been approved.¹⁴

11 Section 8. Appeal. An adverse decision by the WMP compliance official with respect to
12 disapproval of a WMP, denial of an exemption or the rebate of PSDs may be
13 appealed by the applicant to the [city council] [county board of supervisors]
14 pursuant to the following rules [if the city or county already has rules applicable
15 to the appeal of adverse decisions made by city or county officials, the existing
16 process may be incorporated by reference]:

- 17 a. The appeal must be filed in writing with the [city clerk] [county auditor
18 serving as secretary for the county board of supervisors] within five (5)
19 business days of the delivery of the adverse decision by the WMP
20 compliance official to the applicant.
- 21 b. The written appeal shall specify in detail:
 - 22 1) the decision appealed from,
 - 23 2) the errors allegedly made by the WMP compliance official giving
24 rise to the appeal,
 - 25 3) a written summary of all oral and written testimony the applicant
26 intends to introduce at the hearing, including the names and
27 addresses of all witnesses the applicant intends to call,
 - 28 4) copies of all documents the applicant intends to introduce at the
29 hearing, and
 - 30 5) the relief requested.
- 31 c. Within three (3) business days of the filing of the appeal, the WMP
32 compliance official shall specify in writing:
 - 33 1) the reasons for making the decision appealed from,
 - 34 2) a written summary of all oral and written testimony the WMP
35 compliance official intends to introduce at the hearing, including
36 the names and addresses of all witnesses the WMP compliance
37 official intends to call, and
 - 38 3) copies of all documents the WMP compliance official intends to
39 introduce at the hearing.
- 40 d. Within five (5) business days of the filing of the appeal, the [city clerk]
41 [county auditor serving as secretary for the county board of supervisors]
42 shall notify the applicant and the WMP compliance official by ordinary
43 mail, and shall give public notice in accordance with Chapter 21, Iowa
44 Code, of the date, time and place for the regular or special meeting of the
45 [city council] [board of supervisors] at which the hearing on the appeal

¹⁴ See footnote 13.

1 shall occur. The hearing shall be scheduled for a date not later than twenty
2 (20) days after the filing of the appeal. The rules of evidence and
3 procedure, and the standard of proof to be applied, shall be the same as
4 provided by Chapter 17A, Code of Iowa. The applicant may be
5 represented by counsel. The WMP compliance official may be represented
6 by counsel for the facility or by the [city] [county] attorney, or by an
7 attorney designated by the [city] [county] at [city] [county] expense.

8 Section 9. Enforcement

- 9 a. Violation of any provision of this ordinance may be enforced by civil
10 action including an action for injunctive relief. In any civil enforcement
11 action, administrative or judicial, the [city] [county] shall be entitled to
12 recover its attorneys' fees and costs from a person who is determined by a
13 court of competent jurisdiction to have violated this ordinance.
14 b. Violation of any provision of this ordinance may also be enforced as a
15 municipal infraction within the meaning of §364.22, pursuant to the
16 [city's] [county's] municipal infraction ordinance
17 c. Enforcement pursuant to this section shall be undertaken by the [city]
18 [county] through the [city] [county] attorney.
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