

ORDINANCE NO. _____

AN ORDINANCE AMENDING CITY CODE CHAPTERS 15-6 (*SOLID WASTE SERVICES*) AND 25-11 (*BUILDING, DEMOLITION, AND RELOCATION PERMITS; SPECIAL REQUIREMENTS FOR HISTORIC STRUCTURES*) RELATING TO DIVERSION AND DISPOSAL OF CONSTRUCTION AND DEMOLITION MATERIALS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 15-6-1 (*Definitions*) is amended to add new definitions to read as follows.

§ 15-6-1 DEFINITIONS.

- (1) Average Diversion Rate means the percentage of all inbound commingled material over a period of time that a facility diverts for beneficial use.
- (2) Austin Metro Area means the five-county metropolitan area that surrounds the City of Austin.
- (3) Beneficial Use means productive use of materials reclaimed through separation, processing, deconstruction, or other means and made available for recycling or reuse but does not include placement in a disposal facility, used as daily cover in a disposal facility, or used for energy recovery.
- (4) Building Components includes, but is not limited to, doors, windows, fixtures, structural members, architectural parts, masonry, and similar items.
- (5) Deconstruction means dismantling or extracting reusable materials from a project prior to or instead of traditional demolition.
- (6) Project means activities described in Subsections 25-11-39(C) and (D) (*Construction and Demolition Materials Diversion Required*).
- (7) Project Disposal Rate means the total pounds of material generated by a project and disposed per square foot of the Project.
- (8) Project Diversion Rate means the percentage of the materials generated by the project and diverted for beneficial use onsite or offsite.

(9) Qualified Processor means a facility that meets the qualifications in Division 2 of this Article.

PART 2. City Code Chapter 15-6 (*Solid Waste Services*) is amended to add a new Article 9 (*Construction and Demolition Materials Diversion Program*) to read as follows.

DIVISION 1 PROGRAM REQUIREMENTS.

§ 15-6-150 COMPLIANCE REQUIRED.

- (A) Except as provided in Section 15-6-156 (*Waiver*), a permittee subject to Section 25-11-39 shall comply with this Article.
- (B) A permittee complies with this Article if the permittee meets or exceeds the requirements material disposal or diversion rates in Section 15-6-151 (*Project Disposal Rates*) or Section 15-6-152 (*Project Diversion Rates*).
- (C) In this chapter, materials means non-hazardous materials directly or indirectly by-products of a construction or demolition project including, but not limited to, building components, concrete, corrugated cartons, gypsum wallboard, metal, paper, paving, plastics, and wood; but does not include excavated soil, stone, land-clearing debris and similar items

§ 15-6-151 PROJECT DISPOSAL RATES.

- (A) Beginning October 1, 2016, a permittee or its agents may not dispose more than 2.5 pounds of materials per square foot of the project.
- (B) Beginning October 1, 2020, a permittee or its agents may not dispose more than 1.5 pounds of materials per square foot of the project.
- (C) Beginning October 1, 2030, a permittee or its agents may not dispose more than .5 pounds of materials per square foot of the project

§ 15-6-152 PROJECT DIVERSION RATES.

- (A) Beginning October 1, 2016, a permittee or its agents shall divert a minimum of 50 percent of materials generated by the project for beneficial use.
- (B) Beginning October 1, 2020, a permittee or its agents shall divert a minimum of 75 percent of materials generated by the project for beneficial use.
- (C) Beginning October 1, 2030, a permittee or its agents shall divert a minimum of 95 percent of materials generated by the project for beneficial use

1 **§ 15-6-153 PROJECT DISPOSAL AND DIVERSION REPORT.**

2 (A) A permittee shall provide the department the report required by this Section at
3 the same time it requests final inspections to complete the building or
4 demolition permit requirements.

5 (B) A report must include

6 (1) the amounts of materials generated by the project and put to beneficial use
7 onsite;

8 (2) the amounts of materials delivered to a qualified processor;

9 (3) the amounts delivered to a processor or end-user and diverted for
10 beneficial use;

11 (4) the amounts of materials delivered to a processor or end-user and
12 disposed;

13 (5) the amounts of materials delivered directly to a disposal facility; and

14 (6) any other information required by the department

15 **§ 15-6-154 CALCULATIONS.**

16 The department will establish by rule the calculations for project disposal and
17 diversion rates.

18 **§ 15-6-155 QUALIFIED PROCESSOR.**

19 A permittee may deliver materials to a qualified processor to meet the rates
20 established in Section 15-6-151 (*Project Disposal Rates*) or Section 15-6-152 (*Project*
21 *Diversion Rates*)

22 **§ 15-6-156 WAIVER.**

23 (A) A permittee may request a waiver from the disposal rates in Section 15-6-151
24 (*Project Disposal Rates*) and the diversion rates in Section 15-6-152 (*Project*
25 *Diversion Rates*) for a project subject to this Chapter.

26 (B) A request for a waiver must be in writing on a form approved by the director.

27 (C) The director may grant a waiver if the permittee shows a good faith effort to
28 divert construction and demolition materials generated by the project but that

disposal or diversion rates could not be met because of the nature of the construction and demolition materials.

DIVISION 2 QUALIFIED PROCESSORS.

§ 15-6-160 REGISTRATION REQUIRED.

- (A) A facility that meets the requirements in Section 15-6-161 (*Qualified Processor Requirements*) may be registered by the department as a qualified processor.
- (B) A registration is effective for two years.
- (C) 90 days before the expiration of the registration, the facility owner must submit a renewal application.

§ 15-6-161 QUALIFIED PROCESSOR REQUIREMENTS.

- (A) A facility is a qualified processor if it meets the following criteria:
 - (1) complies with all federal, state, and local regulations, including any permit requirements;
 - (2) weighs the items described in Subsection (B);
 - (3) provides the information described in Subsection (C);
 - (4) is located in the Austin Metro Area;
 - (5) authorizes an inspection of its facility by the department; and
 - (6) agrees to the requirements described in Section 15-6-163 (*Audit Requirements*).
- (B) A qualified processor must be able to weigh:
 - (1) inbound mixed materials;
 - (2) materials reclaimed for use from mixed materials; and
 - (3) residual material disposed.
- (C) A qualified processor must be able to provide customers with documentation that shows the dates, the amounts, and disposition of each load of materials, mixed or separated, received from projects subject to this Article. Amounts may be calculated based on tons or in a manner provided for in the Rules.

1 (D) A qualified processor must submit a report each six months to the director that
2 includes the average diversion rate, the types of materials recovered, and the
3 beneficial uses for the materials. The report is due within 30 days after each
4 six month period.

5 (E) A qualified processor must have its average diversion rate validated in
6 accordance with Section 15-6-163 (*Average Division Rate Calculation and*
7 *Validation*).

8 **§ 15-6-162 AVERAGE DIVERSION RATE CALCULATION AND VALIDATION.**

9 (A) A qualified processor's average diversion rate is calculated as the tons of
10 materials reclaimed divided by the tons materials processed and multiplied by
11 100 percent.

12 (B) An entity or individual is authorized to validate a qualified processor's average
13 diversion rate if the entity or individual:

14 (1) has operational or consulting experience in waste management, building
15 design, construction, demolition, renovation, environmental protection, or
16 accounting;

17 (2) if required by the director, completes City-approved training on
18 construction and diversion material recycling, Zero Waste, or other related
19 topics; and

20 (3) is approved by director.

21 (C) An entity or individual qualified under this Section to validate average
22 diversion rate may not charge fees contingent upon a City registering a facility
23 as a qualified processor.

24 (D) An employee, owner, or other agent of the qualified processor may not
25 validate the average diversion rate for the qualified processor.

26 **§ 15-6-163 AUDIT REQUIREMENTS.**

27 (A) A qualified processor shall make its records available for audit by the
28 department during regular business hours.

29 (B) Failure to comply with Subsection (A) is cause to suspend the qualified
30 processor's registration

31 **§ 15-6-164 SUSPENSION.**

- 1 (A) The department may suspend a qualified processor's registration if the
2 qualified processor fails to comply with the requirements in this division.
- 3 (B) Prior to suspending a registration, a written notice of proposed suspension
4 must be sent to the facility owner and operator.
- 5 (C) The notice described in Subsection (B) will include the violation and a time
6 period to correct the violation.
- 7 (D) If the facility does not correct the violation within the time period stated in the
8 notice, the department will notify the facility owner and operator that it is no
9 longer a qualified processor.
- 10 (E) A facility owner or operator may appeal the decision to suspend the qualified
11 processor's registration. An appeal must be filed with the director no later than
12 the 20th day following the date the registration was suspended. The appeal
13 must identify each alleged point of error, facts and evidence supporting the
14 appeal, reasons why the suspension should be set aside, and must be signed by
15 the facility owner or operator. The director must provide a written response to
16 the appeal within 30 days from the date the appeal is received by the director

17 **DIVISION 3. ENFORCEMENT**

18 **§ 15-6-170 ENFORCEMENT.**

- 19 (A) A permittee who fails to submit the report required in Section 15-6-153
20 (*Project Disposal and Diversion Rate Report*) commits an offense punishable
21 as described in Section 1-1-99 (*Offenses; General Penalty*).
- 22 (B) A permittee who fails to submit a substantially complete report required in
23 Section 15-6-153 (*Project Disposal and Diversion Rate Report*) commits an
24 offense punishable as described in Section 1-1-99 (*Offenses; General Penalty*).
- 25 (C) A permittee who fails to meet the requirements in Section 15-6-151 (*Project*
26 *Disposal Rates*) or Section 15-6-152 (*Project Diversion Rates*) commits an
27 offense punishable as described in Section 1-1-99 (*Offenses; General Penalty*).
- 28 (D) A culpable mental state is not required, and need not be proved.
- 29 (E) Each day a permittee fails to submit a report is a separate offense.

30 **PART 3.** City Code Section 15-6-44 (*Reporting Requirements*) is amended to read as
31 follows.

1 **§ 15-6-44 REPORTING REQUIREMENTS.**

- 2 (A) A licensee shall maintain a list of the containers used for the collection,
3 storage, or disposal of solid waste that are owned or serviced by the licensee,
4 with the customer number and the location of each container.
- 5 (B) A licensee shall file a quarterly report of the number of containers it services in
6 the city. A licensee shall submit the container fee required by this article with a
7 report filed under this section.
- 8 (C) A licensee who provides solid waste collection service under Article 3 (*Private*
9 *Solid Waste Collection Service*) or recycling service under Article 5 (*Universal*
10 *Recycling*) shall file a report with the Austin Code Department [~~Compliance~~].
11 The report shall be on a form provided by the Austin Code Department
12 [~~Compliance~~]. The report shall be filed with the Austin Code Department
13 [~~Compliance~~] semi-annually on or before the last business day in January and
14 July of each calendar year. The report shall contain the following information:
- 15 (1) the amount in tons of solid waste, recyclables, and organic materials (but
16 excluding construction and demolition materials) [~~each of the following~~
17 ~~types of material~~] hailed to:
- 18 (a) landfills [~~solid waste~~];
- 19 (b) recycling facilities [~~recyclables~~]; and
- 20 (c) organic materials processing facilities [~~collected and transported to~~
21 ~~a receiving facility~~];
- 22 (2) the amount in tons of construction and demolition materials hailed
23 directly to:
- 24 (a) landfills;
- 25 (b) recycling facilities; and
- 26 (c) organic materials processing facilities; and
- 27
- 28
- 29 (3) other information required by the Austin Code Department [~~Compliance~~].
- 30

PART 4. City Code Chapter 25-11 (*Building, Demolition, and Relocation Permits; Special Requirements for Historic Structures*) is amended to add a new Section 25-11-39 (*Construction and Demolition Materials Diversion Required*) to read as follows.

§ 25-11-39 CONSTRUCTION AND DEMOLITION MATERIALS DIVERSION REQUIRED.

(A) Except as provided in Subsection (E), each person that applies for a building permit or demolition permit for activities described in Subsections (C) and (D) must acknowledge the person's need to comply with this Section and Chapter 15-6, Article 9 (*Construction and Demolition Materials Diversion Program*) before a building or demolition permit is issued.

(B) This section is applicable in the City's zoning jurisdiction.

(C) Except as provided in Subsection (E), beginning January 1, 2016, construction and demolition materials diversion is required for

(1) commercial and multifamily projects that require a demolition permit; and

(2) construction projects that exceed 5,000 square feet.

(D) Except as provided in Subsection (E), beginning January 1, 2020, construction and demolition materials diversion is required for

(1) commercial, multifamily, and residential projects that require a demolition permit; and

(2) construction projects that exceed 1,000 square feet.

(E) Construction and demolition materials diversion is not required for the following activities:

(1) projects for which only mechanical, electrical, or plumbing permits are required or

(2) work for which a building or demolition permit is not required.

PART 5. This ordinance takes effect on October 1, 2016.

PASSED AND APPROVED

_____, 2015

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Steve Adler
Mayor

APPROVED: _____
Anne L. Morgan
Interim City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk

DRAFT

ORDINANCE AMENDMENT REVIEW SHEET

August 13, 2015

Amendment: C20-2014-026 construction and demolition material diversion**Description:** Consider an ordinance amending City Code Title 25, City Code Chapter 15-6, and Austin Resource Recovery administrative rules regarding recycling and reuse of materials generated by building and demolition projects.**Proposed Language:** See attached draft ordinance.**Summary of proposed code changes:**

1. Key amendments to **Title 25** include:
Affected projects:
 - a. Initially, building projects with 5,000 square feet or more
 - b. Initially, commercial or multifamily demolition projects
 - c. Beginning in 2020, add building projects with 1,000 square feet or more
 - d. Beginning in 2020, add residential demolition projects
2. Key amendments to **Chapter 15-6** include:
 - a. Diversion requirements for affected properties:
 - i. Initially, 50% diversion
 - ii. Beginning in 2020, increase to 75%
 - iii. Beginning in 2030, increase to 95%
 - b. Reporting requirement – Affected Projects report amounts diverted and disposed to determine compliance
 - c. Enforcement – Not reporting or meeting diversion requirements is a Class C misdemeanor
 - d. Qualified processors
 - i. The city will register processors that validate their facility's average diversion rate
 - ii. Affected projects that send materials to Qualified Processors have simpler reporting requirements
 - e. Private haulers – report tons of construction materials hauled separately from other materials hauled

Background: Initiated by Council Resolution 20141211-128

In September 2010, the City Council adopted Resolution 20100930-023 directing staff to investigate requiring construction and demolition (C&D) sites to recycle or salvage material. Recognizing the need to cross coordinate with several departments and C&D recycling related organizations, staff released a memo to the City Council explaining the challenges and committed to return with a proposed ordinance in the future.

From December 2013 to November 2014, the Zero Waste Advisory Commission's (ZWAC) Construction & Demolition Recycling Committee and Austin Resource

Recovery (ARR) staff researched ordinances in other communities, conducted public meetings, and met with stakeholders to develop the C&D ordinance. Stakeholders included private haulers; material processors; landfill operators; waste consultants; architects; historic preservation representatives; home builders; construction, demolition, and deconstruction companies; building owners and managers; and public agencies such as the Texas Commission on Environmental Quality, Travis County, and the Capital Area Council of Governments. City departments included Austin Energy Green Building Program, Planning and Development Review Department, Public Works Department, Office of Sustainability, and Austin Code. Based on staff research, the development process, and feedback from stakeholders, amendments to Title 25 and Title 15 were needed.

In October, the ZWAC C&D Committee forwarded its recommendations in the form of an intent document for consideration by the full commission. In November, the ZWAC approved the intent document for consideration by the City Council.

On December 11, 2014, the City Council adopted Resolution 20141211-128 initiating amendments to the Land Development Code and the Solid Waste Services Code that would require certain building and demolition projects to divert construction materials from disposal. The resolution included the ZWAC-approved intent document to serve as guidance in ordinance language development.

Staff Recommendation: Approve amendments to Title 25. Staff is sharing Title 15 amendments to provide the Planning Commission with the diversion and reporting requirements referenced in 25-11-39. The Planning Commission is not required to take action on Title 15.

Board and Commission Actions

November 12, 2014: The Zero Waste Advisory Commission (ZWAC) approved a draft resolution and ordinance intent.

August 19, 2015: The Environmental Commission is scheduled to consider the draft ordinance.

September 9, 2015: ZWAC is scheduled to consider the draft ordinance.

Council Action

Initiating resolution called for presenting this ordinance to Council in October 2015.

A public hearing has not been set.

Ordinance Number: NA

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