

Late Backup

Item No. 98

11/19/2015

Initiated by Law Dept.

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; AND CREATING A PENALTY.

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 of "Average Diversion Rate", "Austin Metro Area", "Beneficial Use", "Deconstruction", "Project", "Project Disposal Rate", "Project Diversion Rate", and "Qualified Processor" to read as follows and to renumber the remaining definitions accordingly:

§ 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.
- (10) Deconstruction means dismantling or extracting reusable materials from a project prior to or instead of traditional demolition.
- (21) Processor means a facility that sorts, crushes, grinds, composts, or recycles materials.
- (22) Project means activities described in Subsection 25-11-39(C) (*Construction and Demolition Materials Diversion Required*).

1 (23) Project Disposal Rate means the total pounds of material generated by a
2 project and disposed per square foot of the Project.

3 (24) Project Diversion Rate means the percentage of the materials generated by
4 the project and diverted for beneficial use onsite or offsite.

5 (25) Qualified Processor means a facility that meets the qualifications in Division
6 2 of Article 9 (Construction and Demolition Materials Diversion Program).

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

9 **DIVISION 1 PROGRAM REQUIREMENTS.**

10 **§ 15-6-150 COMPLIANCE REQUIRED.**

11 (A) Except as provided in Section 15-6-156 (*Waiver*), a permittee subject to
12 Section 25-11-39 (*Construction and Demolition Materials Diversion*
13 *Required*) shall comply with this Article.

14 (B) A permittee complies with this Article if the permittee meets or exceeds either
15 the project disposal rate in Section 15-6-151 (*Project Disposal Rates*) or the
16 project diversion rate in Section 15-6-152 (*Project Diversion Rates*).

17 (C) In this chapter, materials includes non-hazardous materials that are directly, or
18 indirectly, by-products of a project including, but not limited to, building
19 components, concrete, corrugated cartons, gypsum wallboard, metal, paper,
20 paving, plastics, and wood; but does not include excavated soil, stone, land-
21 clearing debris, asbestos-containing materials, lead-containing materials, and
22 similar items.

23 (D) Building components include, but are not limited to, doors, windows, fixtures,
24 structural members, architectural parts, masonry, and similar items.

25 **§ 15-6-151 PROJECT DISPOSAL RATES.**

26 A permittee or its agents may not dispose more than 2.5 pounds of materials per
27 square foot of the project.

28 **§ 15-6-152 PROJECT DIVERSION RATES.**

29 A permittee or its agents shall divert a minimum of 50 percent of materials
30 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 subsection (B)
3 at 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 quantity of materials generated by the project and put to beneficial use
7 onsite;

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

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

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

13 (5) the quantity 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 permittee's request for a waiver must be submitted on a form approved by
27 the director and include a project disposal and diversion report required by
28 Section 15-6-153 (*Project Disposal and Diversion Report*).

- 1 (C) The director may grant a waiver if the permittee shows a good faith effort to
2 divert materials generated by the project but could not meet the disposal or
3 diversion rate requirements because the materials are not marketable in the
4 Austin Metro Area.

5 **DIVISION 2 QUALIFIED PROCESSORS.**

6 **§ 15-6-160 REGISTRATION REQUIRED.**

- 7 (A) The department may register a facility that meets the requirements in Section
8 15-6-161 (*Qualified Processor Requirements*) as a qualified processor.
- 9 (B) A registration is effective for two years.
- 10 (C) To remain registered, the facility owner must submit a renewal application at
11 least 90 days before the expiration of the registration.

12 **§ 15-6-161 QUALIFIED PROCESSOR REQUIREMENTS.**

- 13 (A) A facility is a qualified processor if it meets the following criteria:

- 14 (1) complies with all federal, state, and local regulations, including any
15 permit requirements;
- 16 (2) weighs the items described in Subsection (B);
- 17 (3) provides the information described in Subsection (C);
- 18 (4) is located in the Austin Metro Area;
- 19 (5) authorizes an inspection of its facility by the department; and
- 20 (6) agrees to the requirements described in Section 15-6-163 (*Audit*
21 *Requirements*).

- 22 (B) A qualified processor must be able to weigh:

- 23 (1) inbound mixed materials;
- 24 (2) materials reclaimed for use from mixed materials; and
- 25 (3) residual material disposed.

- 26 (C) A qualified processor must be able to provide customers with documentation
27 that shows the date, quantity of materials, and the disposition of materials,

1 mixed or separated, received from projects subject to this Article. Amounts
2 may be calculated based on tons, or in a manner provided for in the Rules.

3 (D) A qualified processor must submit a report each six months to the director that
4 includes the average diversion rate, the types of materials recovered, and the
5 beneficial uses for the materials. The report is due no later than 30 days after
6 the end of each six month period.

7 (E) A qualified processor must have its average diversion rate validated in
8 accordance with Section 15-6-162 (*Average Division Rate Calculation and*
9 *Validation*).

10 **§ 15-6-162 AVERAGE DIVERSION RATE CALCULATION AND VALIDATION.**

11 (A) A qualified processor's average diversion rate is calculated as the tons of
12 materials reclaimed divided by the tons materials processed and multiplied by
13 100 percent.

14 (B) A person is authorized to validate a qualified processor's average diversion
15 rate if the person:

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

19 (2) completes City-approved training, as may be required by the director, on
20 construction and diversion material recycling, Zero Waste, or other related
21 topics; and

22 (3) is approved by director.

23 (C) A person qualified under this Section to validate average diversion rates may
24 not charge fees contingent upon a City registering a facility as a qualified
25 processor.

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

28 **§ 15-6-163 AUDIT REQUIREMENTS.**

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

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

3 **§ 15-6-164 SUSPENSION.**

4 (A) The department may suspend a qualified processor's registration if the
5 qualified processor fails to comply with the requirements in this division.

6 (B) Prior to suspending a registration, a written notice of proposed suspension
7 must be sent to the facility owner and operator.

8 (C) The notice described in Subsection (B) will include the violation and a time
9 period to correct the violation.

10 (D) If the facility does not correct the violation within the time period stated in the
11 notice, the department will notify the facility owner and operator that the
12 facility is no longer a qualified processor.

13 (E) A facility owner or operator may appeal the decision to suspend the qualified
14 processor's registration. An appeal must be filed with the director no later than
15 20 days after the date the registration was suspended. The appeal must identify
16 each alleged point of error, facts, and evidence supporting the appeal and
17 reasons why the suspension should be set aside. The appeal must be signed by
18 the facility owner or operator. The director must provide a written response to
19 the appeal that affirms, reverses, or modifies the suspension within 30 days
20 from the date the appeal is received by the director.

21 **DIVISION 3. ENFORCEMENT**

22 **§ 15-6-170 ENFORCEMENT.**

23 (A) A permittee who fails to submit the report required in Section 15-6-153
24 (*Project Disposal and Diversion Rate Report*) commits an offense punishable
25 as described in Section 1-1-99 (*Offenses; General Penalty*).

26 (B) A permittee who fails to submit a substantially complete report required in
27 Section 15-6-153 (*Project Disposal and Diversion Rate Report*) commits an
28 offense punishable as described in Section 1-1-99 (*Offenses; General Penalty*).

29 (C) A permittee who fails to meet the requirements in Section 15-6-151 (*Project*
30 *Disposal Rates*) or Section 15-6-152 (*Project Diversion Rates*) commits an
31 offense punishable as described in Section 1-1-99 (*Offenses; General Penalty*).

32 (D) A culpable mental state is not required, and need not be proved.

1 (E) Each day a permittee fails to submit a report is a separate offense.

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

4 **§ 15-6-44 REPORTING REQUIREMENTS.**

- 5 (A) A licensee shall maintain a list of the containers used for the collection,
6 storage, or disposal of solid waste that are owned or serviced by the licensee,
7 with the customer number and the location of each container.
- 8 (B) A licensee shall file a quarterly report of the number of containers it services in
9 the city. A licensee shall submit the container fee required by this article with a
10 report filed under this section.
- 11 (C) A licensee who provides solid waste collection service under Article 3 (*Private*
12 *Solid Waste Collection Service*) or recycling service under Article 5 (*Universal*
13 *Recycling*) shall file a report with the Austin Code Department [Compliance].
14 The report shall be on a form provided by the Austin Code Department
15 [Compliance]. The report shall be filed with the Austin Code Department
16 [Compliance] semi-annually on or before the last business day in January and
17 July of each calendar year. Beginning with the report due in January, 2017, for
18 the six-month reporting period that ends December 31, 2016, t[F]he report
19 shall contain the following information:

20 (1) the amount in tons of solid waste, recyclables, and organic materials (but
21 excluding construction and demolition materials) [each of the following
22 types of material] hauled to:

- 23 (a) landfills [solid waste];
- 24 (b) recycling facilities [recyclables]; and
- 25 (c) organic materials processing facilities [collected and transported to
26 a receiving facility];

27 (2) the amount in tons of construction and demolition materials hauled
28 directly to:

- 29 (a) landfills;
- 30 (b) recycling facilities; and
- 31 (c) organic materials processing facilities; and

(3) other information required by the Austin Code Department [Compliance].

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 (D), each person that applies for a building permit or demolition permit for activities described in Subsection (C) 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 (D), construction and demolition materials diversion is required for

(1) construction projects that exceed 5,000 square feet of new, added, or remodeled floor area; and

(2) beginning October 1, 2019, commercial and multifamily projects that require a demolition permit.

(D) 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. The Council directs the City Manager to provide a report concerning the economic impact of these requirements on household affordability and an assessment of the markets for reuse of construction and demolition materials. The report should be provided to the City Council four years from the effective date of this ordinance.

1 **PART 6.** This ordinance takes effect on October 1, 2016.

2 **PASSED AND APPROVED**

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7 Steve Adler
8 Mayor

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11 **APPROVED:** _____
12 Anne L. Morgan
13 Interim City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk