

ORDINANCE NO. 20140612-010

AN ORDINANCE AMENDING CITY CODE CHAPTER 15-6 RELATING TO SOLID WASTE, RECYCLING, AND COMPOSTING REGULATIONS.

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

PART 1. Section 15-6-1 (*Definitions*) of the City Code is amended to add definitions for manager, premises, and responsible party as follows:

§ 15-6-1 DEFINITIONS.

In this chapter:

- (1) **CODE COMPLIANCE** means the Department of Code Compliance.
- (2) **CODE COMPLIANCE DIRECTOR** means the director of the Department of Code Compliance.
- (3) **COLLECTION SERVICE** means scheduled collection and disposition of solid waste and recyclables, or compostable materials.
- (4) **COMPOSTABLE MATERIAL** means organic material recovered, collected, or otherwise diverted from the non-hazardous solid waste stream, a substantial portion of which will decompose in a managed compost operation.
- (5) **COMPOSTING FACILITIES** means an offsite facility holding all required local, state, and federal authorizations where the organic component of municipal solid waste is decomposed under controlled conditions for purposes of beneficial reuse.
- (6) **CONTAINER** means a permanent collection receptacle made to collect and contain solid waste.
- (7) **DEPARTMENT** means the Austin Resource Recovery Department.
- (8) **DIRECTOR** means the director of the Austin Resource Recovery Department.
- (9) **FACTORY DEMONSTRATION VEHICLE** means a vehicle that meets the requirements of Section 15-6-72 and that a dealer provides to a licensee, as a prospective buyer, to operate and use for a period not to exceed 14 days.
- (10) **HAULER** has the same meaning as **SERVICE PROVIDER**.
- (11) **HAZARDOUS WASTE** means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental

Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 et seq.

- (12) LIQUID WASTE has the same meaning as the definition contained in 30 Tex. Admin. Code § 330.3.
- (13) MANAGER means a person who handles the day-to-day operations of a premises on behalf of an owner.
- (14) ~~[(13)]~~ MEDICAL WASTE has the same meaning as the definition contained in 30 Tex. Admin. Code § 330.3.
- (15) PREMISES means real property and any improvements on the real property.
- (16) ~~[(14)]~~ PRIVATE SOLID WASTE COLLECTION SERVICE means the business of collecting, removing, or transporting solid waste from any premises within the city by a person for a fee.
- (17) ~~[(15)]~~ RECYCLABLE ~~[RECYCLABLE]~~ MATERIAL means non-hazardous material, including compostable material, that has been recovered or diverted from disposal in Municipal Solid Waste (MSW) facilities for purpose of reuse, recycling or reclamation and a substantial portion of which is consistently used in the manufacture of products, which may otherwise be produced using raw or virgin materials.
- (18) ~~[(16)]~~ RECYCLING means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, composted, or processed, and returned to use in the form of raw materials in the production of new products. The definition of recycling does not include waste-to-energy processes, placement in a disposal facility, or use as daily cover in a disposal facility.
- (19) RESPONSIBLE PARTY means: (i) the owner of a premises or an employee of the owner or (ii) the manager of a premises or an employee of the manager.
- (20) ~~[(17)]~~ SERVICE PROVIDER means a person who is compensated for the removal or transportation of solid waste, compostable material, or recyclable material, for a fee, from any location within the City of Austin. Services that are subject to State or Federal requirements related to the transportation of medical or hazardous waste, including oil, liquids, or grease are excluded.
- (21) ~~[(18)]~~ SOLID WASTE means rubbish, refuse, and other discarded materials.

- (22) ~~[(19)]~~ SOLID WASTE SERVICE means collection or disposal of solid waste, collection or processing of recyclable material, litter abatement, street cleaning, or household hazardous waste disposal.
- (23) ~~[(20)]~~ WASTE-TO-ENERGY (WTE) means a process of generating energy directly from materials through a process that yields fuel or heat. WTE is not diversion, nor is it supported by the Department's Master Plan but it is considered an alternative disposal technology that must include the life-cycle effects on the environment.

PART 2. Section 15-6-81 (*Applicability*) of the City Code is renumbered as Section 15-6-80 and a new Section 15-6-81 is added to read as follows:

§ 15-6-81 RESPONSIBLE PARTY GENERAL RULE; EXCEPTION.

- (A) With the exception of Subsection (B), a responsible party shall comply with any duty that is imposed on the responsible party in this Article 5.
- (B) A tenant or lessee on a premises who contracts or arranges with a hauler for solid waste service or who self-hauls is deemed the responsible party with respect to that portion of the premises over which the tenant or lessee has care, custody, control, or possession.

PART 3. Subsection (C) of Section 15-6-82 (*Right of Entry*) of the City Code is amended as follows:

- (C) An inspector shall make a reasonable effort to locate the responsible party ~~[owner or other person having control of the building]~~ and request entry to the premises.

PART 4. Section 15-6-91 (*Affected Premises*) of the City Code is amended as follows:

§ 15-6-91 AFFECTED PREMISES.

- (A) The responsible party for ~~[An owner of]~~ a premises of which all or part is used for multi-family residential use shall ensure that tenants and employees have access to on-site recycling services described under this article, for that portion of the premises that is multi-family residential, effective:
- (1) immediately for premises with ~~[more than]~~ 75 or more dwelling units;
 - (2) October 1, 2013 for premises with ~~[more than]~~ 50 or more but less than 75 dwelling units;
 - (3) October 1, 2014 for premises with 25 or more but less than 50 dwelling units;

- (4) October 1, 2015 for premises with 10 or more but less than 25 dwelling units; and
 - (5) October 1, 2016 for premises with 5 or more but less than 10 dwelling units.
- (B) The responsible party for [~~An owner of~~] a premises of which all or part is used for office, medical office, medical facilities, religious assembly, or private educational facilities shall ensure that tenants and employees have access to on-site recycling services described under this article, for that portion of the premises that has one or more of the uses described in this Subsection (B), effective:
- (1) immediately for premises with more than 100,000 square feet of the non-residential uses described in this Subsection (B); and
 - (2) October 1, 2013 for premises with more than 75,000 square feet and up to 100,000 square feet of the non-residential uses described in this Subsection (B).
- (C) The requirements in Subsection (D) of this section are in addition to the requirements in Subsections (A) and (B) of this section.
- (D) The responsible party for [~~An owner of~~] a premises of which all or part is used for non-residential use, including but not limited to those uses described in Subsection (B) of this section and also including hotels and lodging, grocery stores, and commercial businesses, shall ensure that tenants and employees have access to on-site recycling services described under this article effective:
- (1) October 1, 2014 for premises with more than 50,000 square feet of any type of non-residential use;
 - (2) October 1, 2015 for premises with more than 25,000 square feet and up to 50,000 square feet of any type of non-residential use;
 - (3) October 1, 2016 for premises with more than 5,000 square feet and up to 25,000 square feet of any type of non-residential use; and
 - (4) October 1, 2017 for all non-residential premises that are not described in (D)(1) – (3) of this subsection [~~regardless of size~~].
- (E) In addition to complying with the other requirements described in this section, the responsible party for [~~owner of~~] a premises of which all or a portion has use attributable to a food enterprise that requires a food permit under Section 10-3-61 (*Permit Required*) of this Code to operate shall ensure

that employees at the food enterprise have access to on-site diversion of organic [~~recycling of compostable~~] materials effective:

- (1) October 1, 2016 where the square footage in a certificate of occupancy, food enterprise permit, or similar document issued by a government entity for the food enterprise is is [~~exceeds~~] 15,000 [~~5,000~~] square feet or more; [~~and~~]
 - (2) October 1, 2017 where the square footage in a certificate of occupancy, food enterprise permit, or similar document issued by a government entity for the food enterprise is between 5,000 square feet to 14,999 square feet [~~for all food enterprises regardless of size~~]; and
 - (3) October 1, 2018 for all food enterprises that hold a food enterprise permit and that are not described in (E)(1) – (2) of this subsection.
- (F) For purposes of determining the effective date under this section the director may verify the square footage attributable to a specific use by consulting appraisal district or other public records or by requesting a valid certificate of occupancy or approved site plan documenting the types of uses.
- (G) A responsible party for an affected premises to which an effective date in Subsections (A) – (E) of this section applies and who begins operations after an applicable effective date shall comply with this ordinance on the date the affected premises is issued a certificate of occupancy.

PART 5. Section 15-6-92 (*Recycling Requirements for Affected Premises*) is amended as follows:

§ 15-6-92 DIVERSION [~~RECYCLING~~] REQUIREMENTS FOR AFFECTED PREMISES.

- (A) On-site recycling and organic material diversion services required under this article shall [~~must~~]:
- (1) collect at least the following materials: paper (including mixed paper and office paper), plastics PETE (#1) and HDPE (#2) bottles and containers, aluminum cans, corrugated cardboard, and glass bottles and jars;
 - (2) collect organic [~~compostable~~] materials, if a premises with a food enterprise is subject to Subsection (E) of Section 15-6-91 (*Affected Premises*);
 - (3) provide receptacles, collection, capacity, and storage areas that comply with applicable administrative rules; and

- (4) remove the recyclable or organic [~~compostable~~] materials by either:
- (a) transporting the recyclable and organic [~~compostable~~] materials to a materials recovery or composting facility authorized by law; [~~or~~]
 - (b) contracting with a City-licensed recycling service provider to transport the recyclable and compostable materials to a materials recovery or composting facility authorized by law; or [~~or~~]
 - (c) transporting recyclable or organic material, as permitted and required by City Code, to a material recovery facility, food bank, processor, material broker, urban farm, urban ranch, rural farm, rural ranch, community garden, or a facility that prioritizes the hierarchy of beneficial use as set out in Subsection (D) of this section.
- (B) The director may add to the list of recyclable materials required under Subsection (A)(1) of Section 15-6-92(*Recycling Requirements for Affected Premises*) by providing notice on the City's website at least 365 continuous days before adding the additional materials.
- (C) The department shall adopt rules that establish a process in which the responsible party for [~~owner of~~] an affected premises can request:
- (1) a waiver of certain requirements in this article;
 - (2) approval to comply with this article by achieving the City's Zero Waste Goal through alternative means;
 - (3) approval to substitute another recyclable material in place of a required recyclable material listed in Subsection (A)(1) above;
 - (4) approval to comply with this article by sharing solid waste, recycling, or organic materials diversion [~~composting~~] services; [~~or~~]
 - (5) approval of a deduction of square footage under Subsection (E) of Section 15-6-91(*Affected Premises*) if the food enterprise serves only pre-packaged food; or [~~or~~]
 - (6) approval for performing recycling or organic materials diversion on-site.
- (D) In accordance with the requirements of the Good Faith Donor Act set forth in Chapter 76 of the Texas Civil Practice and Remedies Code, the department shall by rule encourage the responsible party for [~~owners of~~]

affected premises to follow the hierarchy of beneficial use of scrap food which, beginning with the most beneficial, is:

- (1) feeding hungry people;
- (2) feeding animals;
- (3) providing for industrial uses; and
- (4) composting.

PART 6. Section 15-6-93 (*Education*) of the City Code is amended as follows:

§ 15-6-93 EDUCATION.

- (A) The responsible party for ~~[An owner of]~~ an affected premises shall ~~[must]~~ provide recycling information and instructions in accordance with rules adopted by the director to:
 - (1) all tenants and employees of the premises annually;
 - (2) a new employee or tenant no later than the thirtieth day after the tenant occupies or the employee begins work at the premises; and
 - (3) all employees or tenants not later than the 30th day after a substantive change in the recycling service offered at the premises.
- (B) The responsible party ~~[An owner or other person required to provide recycling service to a premises]~~ shall ~~[must]~~ provide recycling information and instructions in accordance with rules adopted by the director to:
 - (1) each business, tenant, or organization located at the premises annually;
 - (2) a business, tenant, or organization newly located to the premises not later than the 30th day after any change in occupancy; and
 - (3) all occupancies at the premises not later than the 30th day after a change in the recycling service offered.
- (C) All information and documentation, including signage, required to be provided to persons or posted as public information under this article shall ~~[must]~~ be written in English and Spanish and include universal symbols as adopted by the director.
- (D) Each container designated or used for collection and disposal of materials to a state-recognized landfill shall ~~[must]~~ be prominently marked "Landfill Trash" in English and Spanish and in compliance with the rules adopted by the director.

- (E) Each container designated or used for collection or transport of recyclable or organic ~~[compostable]~~ materials shall be affixed with a sign that includes:
 - (1) the universal chasing arrows recycling symbol;
 - (2) the type of materials accepted written in English and Spanish; and
 - (3) the term "Recycling" or "Compostables" or "Organics", as appropriate.

PART 7. Section 15-6-101 (*Recycling Plan*) of the City Code is amended as follows:

§ 15-6-101 ANNUAL DIVERSION ~~[RECYCLING]~~ PLAN.

- (A) The responsible party for ~~[An owner of]~~ an affected premises shall submit a recycling plan to the department by February 1 of each year starting with the year in which requirements of this article apply to the premises.
- (B) The responsible party for ~~[An owner of]~~ an affected premises shall submit a recycling plan for a new business, building, or multi-family residential complex not later than the 30th day after receiving a certificate of occupancy or beginning operations or following any change that reduces recycling service or the types of materials collected.
- (C) A plan must:
 - (1) be on a form prescribed by the director;
 - (2) list the materials to be diverted ~~[recycled]~~;
 - (3) state the service capacities for landfill trash, recyclables, and organic ~~[compostable]~~ materials;
 - (4) state the collection method and service providers for landfill trash, recyclables, and organic ~~[compostable]~~ materials; and
 - (5) include information or documentation as required by the director to verify compliance with this article.
- (D) The director may exempt a property from submitting a Recycling Plan if the property contracts with the City for solid waste and recycling services or if exempting the property is consistent with the City's Zero Waste Goal set out in Resolution No. 20090115-050 and the Department's Master Plan adopted in Resolution No. 20111215-047, as those resolutions may be amended from time to time.

PART 8. Section 15-6-102 (*Biannual Quantity Report*) is repealed and replaced with language that reads as follows:

§ 15-6-102 RESERVED.

PART 9. Section 15-6-103 (*Notice of Contract Termination*) is amended as follows:

§ 15-6-103 NOTICE OF CONTRACT TERMINATION.

A person who provides recycling or organic diversion service under this article by contract with a recycling service provider shall notify the department in writing not later than the 30th day after the person terminates the contract.

PART 10. Section 15-6-104 (*Notice of Change of Provider*) is amended as follows:

§ 15-6-104 NOTICE OF CHANGE OF PROVIDER.

- (A) The responsible party for ~~[An owner of]~~ an affected premises shall notify the department in writing if the person:
- (1) discontinues self-hauling and contracts with a recycling or organic materials diversion service provider; or
 - (2) terminates a contract with a provider licensed under Article 3 (*Private Solid Waste Collection Service*).
- (B) A responsible party ~~[person]~~ shall submit the notice required by this section ~~[with]~~ to the department in accordance with rules adopted by the director ~~[and concurrently with their required reporting under Section 15-6-102~~ (*Biannual Quantity Report*)].

PART 11. Section 15-6-105 (*Registration of Recycling and Composting Haulers and Recycling Providers*) of the City Code is amended as follows:

§ 15-6-105 REGISTRATION OF RECYCLING AND ORGANIC MATERIAL [COMPOSTING] HAULERS AND RECYCLING PROVIDERS.

- (A) A person who owns, operates, or provides a recycling and organic material ~~[composting]~~ hauler or recycling processor business or service located within the territorial jurisdiction of the City or to any premises within the territorial jurisdiction of the City shall submit to the director in compliance with applicable rules adopted for such registration the following:
- (1) physical address of operation;
 - (2) proof of insurance - annual commercial fleet policy;
 - (3) drivers' licenses for company drivers, including commercial drivers' licenses, if applicable;
 - (4) proof that the recycling hauler or recycling processor is using the correct vehicle to transport recyclable materials consistent with Section 15-6-42 (*Vehicles and Equipment*); and

- (5) other documentation as specified in applicable rules for such registration adopted by the director.
- (B) A person who owns, operates, or provides a recycling processor business agrees as a condition of such registration to submit to a random site inspection of their property or premises upon request by the director to ensure that the processor's operations are being conducted in compliance with all applicable City Codes and regulations relating to land development, health and safety, recycling, and nuisance abatement.

PART 12. Article 8 (*Enforcement and Penalties*) of Chapter 15-6 (*Solid Waste Service*) of the City Code is amended by adding a new Section 15-6-133 that reads as follows:

§ 15-6-133 ENFORCEMENT AGAINST EMPLOYEES.

In accordance with Sections 250.003 and 250.004 of the Texas Local Government Code, an individual who is an employee of the owner of real property for which a citation for a violation of a municipal rule or ordinance is issued, or a company that manages the property on behalf of the property owner, is not personally liable for criminal or civil penalties resulting from the violation if, not later than the fifth calendar day after the date the citation is issued, the individual provides the property owner's name, current street address, and telephone number to the enforcement official who issues the citation or to the official's superior.

PART 13. This ordinance takes effect on June 23, 2014.

PASSED AND APPROVED

_____, June 12, 2014

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§ _____
Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk