



# Metropolitan Nashville and Davidson County, TN

## Legislation Text

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An ordinance amending Chapter 10.20 Waste Management and Title 16 Buildings and Construction, of the Metropolitan Code of Law, to add the requirement that construction and demolition materials be diverted from landfills.

WHEREAS, Metropolitan Government's Solid Waste Region Board, formed pursuant to Tenn. Code Ann. § 68-211-812, is tasked by statute to create a ten-year plan for the disposal of solid waste which achieves reduction by twenty-five percent (25%) through waste reduction and recycling; and,

WHEREAS, in 2019, the Solid Waste Region Board drafted a Solid Waste Management Plan with a primary objective of Metro reducing reliance on landfilling over the next 30 years; and,

WHEREAS, the state of Tennessee, Department of Environmental Protection, approved Metro's solid waste plan pursuant to Tenn. Code. Ann. § 68-211-814(a)(1); and,

WHEREAS, to reduce reliance on landfilling, Metro must minimize waste generation and maximize the diversion of materials from landfills by implementing sustainable solid waste management practices such as increased recycling; and,

WHEREAS, to that end, the Solid Waste Management Plan emphasized that Metro should adopt recycling programs that address Nashville's explosive growth in the construction and demolition waste stream, which has nearly doubled since 2008, to divert those materials from landfills; and,

WHEREAS, it is in the best interest of the citizens of the Metropolitan Government to divert construction and demolition waste from landfills.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY.

Section 1. That Section 10.20.010 of the Metropolitan Code of Law is hereby amended by adding the following definitions:

"Beneficial Reuse" means the use of materials that would otherwise be discarded as solid waste for reuse, recycling, composting, or other diversion from landfill, not including alternative daily cover or other application where the material is used inside a landfill including landfill cells and landfill cover unless otherwise specified by the department.

"Clean Concrete" means reinforced and non-reinforced concrete that is free of wood, trash, and paper contaminants.

"Clean Fill Materials" means solely natural rock, dirt, stumps, pavement, clean concrete, concrete masonry units, and/or brick rubble for use as fill.

"Clean Fill Site" means a location where clean fill materials may be delivered to for the use of fill per the Tennessee Department of Environment and Conservation Rule 0400-11-01-.02(1)(b)3(xiii).

"Concrete Masonry Unit" means standardized building block composed of Portland cement, aggregates, and water. Commonly referred to as "CMU".

“Contaminated Soils” means soils that contain concentration(s) of any constituent(s) such that the soil exhibits the characteristic(s) of a hazardous waste per the Tennessee Department of Health Rule 1200-1-11-.02(3).

“Land Clearing Debris” means rocks, soils (not including contaminated soils), trees, logs, stumps, roots, brush, and other vegetative matter that normally results from land clearing or land development operations. This does not include vegetative matter from lawn maintenance, commercial, or residential landscape maintenance.

“Masonry” means individual units of brick, stone, or concrete and glass block laid in and bound together by mortar.

“Readily Recyclable” means free of corrosives, combustibles, radioactive materials, or other hazardous material.

“Receiving and Recycling Facility” means any resource recovery facility as defined in section 10.20.010 or recycling center as defined in section 10.20.010.

Section 2. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.600, and the following:

10.20.600 - Construction and demolition material diversion required.

A. Construction and Demolition materials shall be recycled or reused on or off site for beneficial reuse as defined in section 10.20.010. Materials identified in subsections D and E shall not be deposited in construction and demolition site solid waste containers for disposal at public or private transfer stations, public or private landfills, or other in or out of county disposal locations.

B. To carry out the requirements hereunder, the director of the department of water and sewerage services, or his designee, shall have the authority to:

1. Establish a schedule of construction and demolition materials to be recycled or reused and to revise the schedule, as necessary, if end markets for these materials are not available or in the event of local receiving or recycling facility closures. Such schedule shall be filed with the clerk of the Metropolitan Government.
2. Establish a schedule of applicable building construction and demolition permit types and project scopes which will require compliance with this section. Such schedule shall be filed with the clerk of the Metropolitan Government.
3. Enter, with the consent of the owner, and upon presentation of proper identification, any building, structure, or premise within the jurisdiction of the Metropolitan Government to ensure compliance with this section.
4. Charge a fee which covers the department’s cost of reviewing waste management plans to ensure compliance with this section and to inspect qualified receiving and recycling facilities pursuant to section 10.20.605.

C. Subject to the authority of the director to adjust these criteria, building permit types that fall under the following project scopes must comply with this section:

1. Commercial construction permits of \$500,000 or greater construction cost, as entered by Metro Codes; and
2. Residential multifamily construction permits of five units or greater and \$500,000 or greater construction cost, as entered by Metro Codes; and

3. Commercial demolition permits of \$50,000 or greater demolition cost, as entered by Metro Codes.

For the purposes of this section, "commercial construction" and "demolition permit" shall have a meaning consistent with the use of those terms in Chapter 16.28 of this Code, and "residential multifamily" shall mean residential construction of five units or greater.

D. Except as provided in subsections G and J and subject to the authority of the director to adjust these criteria, each person who applies for a building construction permit as identified in subsection C for activities described in §16.28.010 are required to divert the following construction debris for beneficial reuse.

1. Effective July 1, 2024, readily recyclable cardboard per §10.20.095, metal (ferrous and non-ferrous), clean concrete, and concrete masonry units,
2. Effective July 1, 2025, readily recyclable unpainted and untreated wood, asphalt shingles, and masonry.
3. Effective July 1, 2026, readily recyclable new construction gypsum scrap and carpet.

E. Except as provided in subsections G and J and subject to the authority of the director to adjust these criteria, each person who applies for a building demolition permit as identified in subsection C for activities described in section 16.28.010 are required to divert the following demolition debris for beneficial reuse:

1. Effective July 1, 2024, readily recyclable metal (ferrous and non-ferrous), clean concrete, and concrete masonry units.
2. Effective July 1, 2025, readily recyclable carpet, asphalt shingles, and masonry.

F. The following options may be used to meet compliance with this section for construction and demolition materials outlined in subsections D and E:

1. Clean fill sites provided that the permit applicant provides proof of the site's regulatory compliance.
2. Receiving and recycling facilities. Starting July 1, 2025, receiving and recycling facilities must be qualified in accordance with section 10.20.605.
3. Beneficial reuse of material for purposes other than fill on a construction or demolition project site, provided the beneficial reuse is approved by the director or his designee.
4. Donation of materials for reuse, provided the permit applicant provides documentation including the location and beneficial reuse of the material, and reuse is approved by the director or his designee.
5. Beneficial reuse of material as soil amendment provided the beneficial reuse meets all state and local regulations and is approved by the director or his designee.

G. The diversion requirements under this section will not apply where construction and demolition wastes are hazardous wastes, especially those that contain asbestos or lead-based constituents or are generated during disaster emergency situations where disaster debris needs to be removed quickly.

1. Permit applicants for these projects must apply for a waiver from the diversion requirements in a format provided by the department when applying for their building permit.

H. Prior to the issuance of a building permit or building demolition permit, a construction and demolition

waste management plan must be submitted to, reviewed by, and approved by the department pursuant to section 16.28.040(D). Waste management plans shall include anticipated quantities, types, and delivery destinations of materials to be generated on construction and demolition projects in compliance with this section.

- I. Prior to the issuance of a use and occupancy permit, documentation shall be submitted to the department evidencing compliance with this section including the following:
  - 1. Waste management plans shall include all weight tickets for material disposal and material beneficial reuse in compliance with this section.
- J. Projects under contract prior to January 1, 2024, for which the contract includes the provision of debris management agreed upon by the parties thereto, may apply for a waiver from the provisions of the section, provided that the permit applicant provides evidence of such contract and provides evidence that complying with this section would result in a minimum of a 10% increase to contracted disposal cost or equivalent or greater cost in contract penalties.
- K. Violations of this chapter shall result in a civil penalty in the amount of fifty dollars per violation, with each and every violation constituting a separate and distinct offense. The department may withhold building or demolition permits from any person, partnership, limited partnership, joint venture, corporation or any other type of business entity or related entity who has another project currently in violation of this section. For purposes of this section, partnerships, limited partnerships, joint ventures, corporations, or other type of business entities owned or operated by common person(s) or having common person(s) involved in the day-to-day operation of the business will be viewed as a related entity unless a significant change of control can be evidenced.

Section 3. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.605, and the following:

10.20.605 - Qualified Receiving and Recycling Facility requirements

- A. The director shall have the authority to establish, and shall have the authority to revise as necessary, criteria for identifying qualified receiving and recycling facilities that meet construction and demolition materials requirements. The criteria shall address, at a minimum, compliance with solid waste permitting requirements, reporting on the quantities and types of incoming and outgoing construction and demolition materials, and performance standards for the allowable quantities of targeted recyclable materials in residuals bound for landfill disposal. Subject to the authority of the director to adjust these criteria to meet construction and demolition materials requirements, a facility is a qualified receiving and recycling facilities pursuant to this section if it meets the following criteria:
  - 1. Complies with all federal, state, and local laws and regulations, including any permit requirements;
  - 2. Weighs the construction and demolition materials received pursuant to section 10.20.600;
  - 3. Authorizes a right of entry and inspection by the department of its facility;
  - 4. Provides access to the facility to the department within 5 days of authorization provided for in (3) above; and
  - 5. Agrees to provisions of this section and section 10.20.610.
- B. A qualified receiving and recycling facility must be able to weigh:

1. Inbound mixed materials;
  2. Materials reclaimed for beneficial reuse from mixed materials; and
  3. Residual material.
- C. A qualified receiving and recycling facility must be able to provide customers with documentation that shows the date, quantity, weight, and the types of materials, mixed or separated, received from projects subject to this section.
- D. A qualified receiving and recycling facility must submit a report each year to the department that includes the average diversion rate, the types of materials recovered, and the beneficial uses for the materials. The report is due no later than 30 days after the end of each one-year period.
- E. A qualified receiving and recycling facility must have its average diversion rate validated in accordance with section 10.20.610 and meet the following average diversion rate:
1. Starting July 1, 2025, a qualified receiving and recycling facility that accepts mixed construction and demolition debris must have at least a 40% average diversion rate. Up to 5% of this average diversion rate may include alternative daily cover application.
  2. Starting July 1, 2025, a qualified receiving and recycling facility that accepts source separated construction and demolition debris must have at least an 85% average diversion rate without use of alternative daily cover application.
  3. Starting July 1, 2027, a qualified receiving and recycling facility that accepts mixed construction and demolition debris must have at least a 50% average diversion rate without use of alternative daily cover application.
  4. Starting July 1, 2027, a qualified receiving and recycling facility that accepts source separated construction and demolition debris must have at least a 90% average diversion rate without use of alternative daily cover application.
  5. Starting July 1, 2029, a qualified receiving and recycling facility that accepts mixed construction and demolition debris must have at least a 60% average diversion rate without use of alternative daily cover application
- F. The department shall publish a list of qualified receiving and recycling facilities on the official website of the Metropolitan Government of Nashville and Davidson County as such facilities are certified pursuant to this section.

Section 4. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.610, and the following:

10.20.610 -- Average Division Rate Calculation and Validation for Qualified Receiving and Recycling Facilities.

- A. A qualified receiving and recycling facility's average diversion rate is calculated as the tons of materials reclaimed divided by the tons materials processed and multiplied by 100.
- B. Average diversion rate shall be calculated with and without alternative daily cover and other landfill application. Both rates shall be provided to the department at the time of certification and in an annual report to the department as required in section 10.20.605(D).
- C. A person, firm, or organization is authorized to validate a qualified receiving and recycling facility's average diversion rate if they have operational or consulting experience in waste management,

building design, construction, demolition, renovation, environmental protection, or accounting.

- D. An employee, owner, or other agent of the qualified receiving and recycling facility may not validate the average diversion rate for the qualified processor.
- E. A qualified receiving and recycling facility shall make its facility available to the department for inspection during regular business hours and within 5 business days of notice.

Section 5. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.615, and the following:

10.20.615 - Suspension of Qualified Receiving and Recycling Facilities

- A. The department may suspend a qualified receiving and recycling facility's registration if the qualified receiving and recycling facility fails to comply with the requirements set forth in Section 10.20.605 or 10.20.610.
- B. Prior to suspending a registration, a written notice of proposed suspension must be sent to the qualified receiving and recycling facility owner and operator. Such notice shall include the violation and a time period not less than 30 days to correct the violation.
- C. If the qualified receiving and recycling facility does not correct the violation within the time period stated in the notice, the department will notify the facility owner and operator that the facility is no longer a qualified receiving and recycling facility.
- D. A facility owner or operator may appeal the decision to suspend the qualified receiving and recycling facility's registration to the director. An appeal must be filed with the department no later than 20 days after the date the registration was suspended. The appeal must identify each alleged point of error, facts, and evidence supporting the appeal and reasons why the suspension should be set aside. The appeal must be signed by the facility owner or operator. The department must provide a written response to the appeal that affirms, reverses, or modifies the suspension within 30 days from the date the appeal is received by the department.

Section 6. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.620, and the following:

10.20.620 - Convenience and Recycling Centers

Metro convenience and recycling centers shall not be used for recycling or disposal of commercially generated construction and demolition debris.

Section 7. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.630, and the following:

10.20.630 - Recyclable construction and demolition material collected separate from putrescible waste.

The owner or contractor of any premises that collects construction and demolition waste defined in §10.20.010 resulting from the construction, repair, remodeling or demolition of any building or appurtenances shall collect such inert material on site separate from putrescible wastes, including municipal solid waste.

Section 8. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 10.20.640, and the following:

10.20.640 - Sustainable Materials Management for Metropolitan Government

A. Effective January 1, 2024, and in addition to meeting the provisions of section 10.20.600 and section

10.20.605, the metropolitan government shall integrate sustainable materials management for construction and demolition material into the design, construction (including new construction, additions, and rehabilitation), and demolition of metropolitan government facilities, and metropolitan government-funded projects, including but not limited to the following:

1. Prioritizing rehabilitation of existing buildings, in-whole or in-part, where possible; and
2. Prioritizing deconstruction methods in demolition activity where markets are available for the generated building materials; and,
3. Salvaging material such as furniture, fixtures, millwork, casework, cabinetry, and any other finish goods that can be reclaimed for reuse prior to demolition or renovation.

Construction projects shall report the pounds of waste generated per gross square foot to the department at the completion of the project in addition to the reporting requirements identified in §10.20.600 in a format provided by the department.

B. Request for proposals (RFP) and invitations to bid (ITB) documents for the procurement of construction and demolition services shall include provisions for sustainable materials management for construction and demolition material in the scope of service including, but not limited to:

1. Compliance with §10.20.600; and,
2. A liability clause for contractors where they have failed to maintain recycling and landfilling receipts, fail to identify hauler and/or disposal location, recycling center, or resource recovery facility; and,
3. Providing clear signage for on-site mobile waste containers; and,
4. Providing a communication plan to educate and inform all crew members including all contractors and subcontractors working on-site about the reuse, recycling, and solid waste collection requirements.

C. The department shall make staff available to assist any Metro Department in ensuring compliance with this section for the procurement of construction and demolition services.

D. The provisions of this section shall be applicable to all metropolitan government departments, agencies, boards and commissions and their contractors responsible for planning, designing, developing, constructing, and managing metropolitan government-owned facilities, infrastructure, and buildings.

E. This section shall apply to projects which exceed five thousand gross square feet of occupied space or for which the total project cost exceeds two million dollars.

F. The provisions of this section shall not apply to current metropolitan government facilities that have been approved as part of the fiscal year 2024 capital spending plan for planning, land acquisition, and/or construction. However, these projects shall still implement sustainable materials management to the maximum extent possible and practicable.

G. In considering purchases of land for future development, the metropolitan government shall evaluate its ability to design the property in ways that design for less waste and reduce construction and demolition debris material generated from development.

H. The metropolitan government shall provide leadership and guidance to encourage the application of sustainable materials management best practices for construction and demolition waste reduction practices in private sector development by considering rehabilitation of existing buildings prior to development of deconstruction and salvage plans.

Section 9. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 16.64.010, and the following:

16.64.010 - Compliance with Construction and Demolition Material Diversion

- A. Except as provided in section 16.64.020(B), each person who applies for a building permit or demolition permit identified in section 10.20.600(C), and as later set forth in a schedule of applicable permit types and project scopes by the director, must acknowledge the need to comply with Chapter 10.20.600 before a building or demolition permit or use and occupancy permit is issued.
- B. Except as provided in section 16.64.020(B), construction and demolition materials diversion for beneficial reuse is required for the schedule of generated construction and demolition materials outlined in sections 10.20.600(D) and 10.20.600(E).

Section 10. That the Metropolitan Code of Law is hereby amended by adding a new section, Section 16.64.020, and the following:

16.64.020 - Affected Permit and Project Types

- A. The director of Water Services shall have the authority to revise as necessary, a schedule of permit types applicable to that department's enforcement of construction and demolition material diversion on permitted construction and demolition projects, to meet recycling goals as set out in the Solid Waste Management Plan. Such schedule shall be filed with the clerk of the Metropolitan Government.
- B. 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.

Section 11. That Amendments to this legislation shall be approved by resolution.

Section 12. This ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

### Analysis

This ordinance amends various provisions of the Metropolitan Code to require that construction and demolition materials be diverted from landfills.

This ordinance adds a new Section 10.20.600 to the Metropolitan Code of Laws, which requires that construction and demolition materials be recycled or reused on or off site for beneficial reuse. Building permit types that fall within the following project scopes must comply with the new regulations:

- 1. Commercial construction permits of \$500,000 or greater construction cost, as entered by Metro Codes; and
- 2. Residential multifamily construction permits of five units or greater and \$500,000 or greater construction cost, as entered by Metro Codes; and
- 3. Commercial demolition permits of \$50,000 or greater demolition cost, as entered by Metro Codes.

Construction debris would be required to be diverted for beneficial reuse under the following schedule:

- 1. Effective July 1, 2024, readily recyclable cardboard per §10.20.095, metal (ferrous and non-ferrous),

- clean concrete, and concrete masonry units,
- 2. Effective July 1, 2025, readily recyclable unpainted and untreated wood, asphalt shingles, and masonry.
- 3. Effective July 1, 2026, readily recyclable new construction gypsum scrap and carpet.

Demolition debris would be required to be diverted for beneficial reuse under the following schedule:

- 1. Effective July 1, 2024, readily recyclable metal (ferrous and non-ferrous), clean concrete, and concrete masonry units.
- 2. Effective July 1, 2025, readily recyclable carpet, asphalt shingles, and masonry.

Alternatives for compliance would include clean fill sites, receiving and recycling centers, beneficial reuse on a construction or demolition project site, donation of materials for reuse, and beneficial reuse of material as soil amendment. The diversion requirements would not apply to hazardous wastes like asbestos or lead-based constituents, or in disaster emergency situations. A construction and demolition waste management plan must be submitted to, reviewed by, and approved by MWS prior to the issuance of a building permit. Violations of these provisions would be \$50 per violation, with each violation constituting a separate offense.

This ordinance also adds a new Section 10.20.605, which authorizes the MWS director to establish criteria for identifying qualified receiving and recycling facilities that meet construction and demolition materials requirements. The facility must comply with federal, state, and local laws and regulations, weigh construction and demolition materials received, authorize a right of entry and inspection by MWS, and agree to the average diversion rate calculation and validation requirements set by this ordinance.

A qualified receiving and recycling facility must meet the following average diversion rate:

- 1. Starting July 1, 2025, a qualified receiving and recycling facility that accepts mixed construction and demolition debris must have at least a 40% average diversion rate. Up to 5% of this average diversion rate may include alternative daily cover application.
- 2. Starting July 1, 2025, a qualified receiving and recycling facility that accepts source separated construction and demolition debris must have at least an 85% average diversion rate without use of alternative daily cover application.
- 3. Starting July 1, 2027, a qualified receiving and recycling facility that accepts mixed construction and demolition debris must have at least a 50% average diversion rate without use of alternative daily cover application.
- 4. Starting July 1, 2027, a qualified receiving and recycling facility that accepts source separated construction and demolition debris must have at least a 90% average diversion rate without use of alternative daily cover application.
- 5. Starting July 1, 2029, a qualified receiving and recycling facility that accepts mixed construction and demolition debris must have at least a 60% average diversion rate without use of alternative daily cover application.

The ordinance further adds requirements for average diversion rate calculations and validation for qualified receiving and recycling facilities, set forth in a new Section 10.20.610. The average diversion rate would be calculated by the tons of materials reclaimed divided by the tons of materials process and multiplied by 100. The rate would be calculated both with and without daily cover and other landfill application. The rate cannot be validated by an employee, owner, or agent of the qualified receiving and recycling facility.

MWS would be authorized to suspend a qualified receiving and recycling facility's registration if it fails to comply with Sections 10.20.605 or 10.20.610.

Metro convenience centers and recycling centers would not be allowed to be used for recycling or disposal of commercially generated construction and demolition waste.

Owners or contractors of any premises that collects construction and demolition waste would be required to collect inert material on site separate from putrescible wastes, including municipal solid waste.

A new section 10.20.640 would be added to the code to require the Metropolitan Government to comply with the new Sections 10.20.600 and 10.20.605 and to integrate sustainable materials management for construction and demolition material into the design, construction, and demolition of Metropolitan Government facilities.

Section 16.64.010 would be added to require building permit and demolition permit applicants to acknowledge the need for compliance with Section 10.20.600 before a building permit, demolition permit, or use and occupancy permit is issued.

*Fiscal Note: The penalty will be \$50 per violation under this ordinance, with each and every violation constituting a separate and distinct offense.*