



King County

Metropolitan King County Council Committee of the Whole

STAFF REPORT

Agenda Item:	6	Name:	Terra Rose
Proposed No.:	2020-0243	Date:	October 6, 2021

SUBJECT

Proposed Ordinance 2020-0243 would make changes to the construction and demolition (C&D) code (K.C.C. 10.30) and associated definitions (K.C.C. 10.04.020), as well as authorize the Executive to enter into agreements with C&D receiving facilities using an updated agreement template.

SUMMARY

Construction and demolition (C&D) waste, resulting from construction, remodeling, repair or the demolition of buildings, roads, or other structures, has been banned from most King County facilities since 1993 with limited exceptions as outlined in King County Code. C&D waste loads can be characterized as nonrecyclable C&D waste, recyclable C&D waste, and mixed C&D waste, which is comprised of C&D waste containing both recyclable and nonrecyclable C&D waste material that has not been separated. Current King County code requires all generators, handlers and collectors of **mixed and nonrecyclable C&D waste** generated within the County's jurisdiction to deliver or ensure delivery to a designated C&D receiving facility (K.C.C. 10.30.020).

Ordinance 18166, adopted in 2015, allowed the County to enter into a uniform agreement, referred to as the Designated Facility Agreement (DFA), with any qualified transfer facility, material recovery facility (MRF), or combination MRF and transfer facility, and the facility would become a "designated" facility able to receive C&D waste. The DFA sets the terms and conditions under which C&D waste may be received, processed, recycled, and disposed. Additionally, King County imposes a \$4.25 per ton fee on the disposal of C&D waste generated in the County's jurisdiction for the purpose of funding Solid Waste Division costs to manage the C&D recycling and disposal program.

Proposed Ordinance 2020-0243 would:

- Add language to the C&D code placing explicit responsibility on the generators, handlers, and collectors of C&D waste to send C&D loads to the proper C&D facilities;
- Expand the definition of C&D receiving facilities to include intermodal facilities and landfills, but limit use of said facilities to "eligible C&D demolition projects" in accordance with a waste diversion plan approved by the County. Under the

proposed ordinance, only nonrecyclable C&D waste would be allowed to be sent to intermodal facilities and landfills with a DFA; and

- Authorize the Executive to enter into DFAs with C&D receiving facilities using an updated agreement template containing provisions for intermodal facilities and landfills (Attachment A to PO 2020-0243).

Council staff identified inconsistent usage of terms and other ambiguities in both the current code and the transmittal. At Councilmember direction, Council staff worked with Executive staff to develop **Striking Amendment S1** to address these issues. **Title Amendment T1** would conform the title to the changes made by the striking amendment.

BACKGROUND

Construction and Demolition Waste Background. Construction and demolition (C&D) waste is defined in King County Code as "any non-putrescible¹ recyclable or nonrecyclable waste that results from construction, remodeling, repair or demolition of buildings, roads or other structures and requires removal from the site of construction or demolition."² Examples of C&D waste include: clean, painted or treated wood; dimensional lumber; gypsum wallboard; roofing; siding; structural metal; wire; insulation; packaging materials; and concrete, asphalt, and other aggregates.

C&D waste loads can be characterized as:

- *Nonrecyclable C&D waste*, which means any C&D waste that is not recyclable;³
- *Recyclable C&D waste*, which refers to C&D material that can be kept out of or recovered from C&D waste and reused or transformed into a usable product;⁴ or
- *Mixed C&D waste*, which is comprised of C&D waste containing both recyclable and nonrecyclable C&D waste material that has not been separated.⁵

According to Executive staff, construction projects produce mostly recyclable and mixed C&D waste and not much nonrecyclable C&D waste. Demolition projects, on the other hand, produce larger amounts of nonrecyclable C&D waste such as painted wood and drywall and other materials. The 2019 Comprehensive Solid Waste Management Plan indicates that C&D materials are typically hauled from a job site by the contractor or individual working at the job site or an independent construction and demolition debris hauler.

In 2015, the County's solid waste service area, which does not include Seattle and Milton, generated approximately 1.05 million tons of C&D materials, of which approximately 877,000 tons were recycled and approximately 172,000 tons were disposed.⁶ For context, approximately 870,000 tons of municipal solid waste were

¹ "Putrescible waste" is defined in code as "solid waste that contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors" (KCC 10.04.020.YYY)

² K.C.C. 10.04.020.S

³ K.C.C. 10.04.020.NNN

⁴ K.C.C. 10.04.020.BBBB

⁵ K.C.C. 10.04.020.HHH

⁶ 2019 Comprehensive Solid Waste Management Plan (Ordinance 18893)

disposed at County facilities in the same year.⁷ According to the 2020 Strategic Climate Action Plan, the C&D diversion rate in 2017 was 80 percent.⁸

Since 1993, the County has banned C&D waste at most of its facilities, except for in incidental amounts in limited circumstances.⁹ C&D waste may be accepted in quantities beyond incidental amounts at county-owned transfer stations that comply with the recycling requirements in the C&D code (K.C.C. 10.30) or that collect and transfer C&D waste to C&D receiving facilities that have agreements with the County.

Between 1993 and 2016, the Solid Waste Division (Division) contracted with two private companies -- Waste Management, Inc. and Republic Services -- to receive, process, and dispose of the region's C&D waste.¹⁰ Ordinance 18166, adopted by the Council in late 2015, changed this approach to expand the number of facilities authorized to receive C&D waste. Under the current system, the County can enter into a uniform agreement, referred to as the Designated Facility Agreement (DFA), with any qualified transfer facility, material recovery facility (MRF),¹¹ or combination MRF and transfer facility, and the facility would become a "designated" facility eligible to receive C&D waste generated in the county's jurisdiction.

The following table lists the designated C&D receiving facilities at the time this staff report was written, along with their locations.

⁷ While disposal data for the Cedar Hills Regional Landfill is available in near real-time, the year 2015 was chosen for comparison due to the availability of C&D waste data, which is compiled from several data sources, including from the Washington State Department of Ecology and which lags several years. According to the 2020 Solid Waste Division Annual Report, 871,563 tons of garbage were disposed of at Cedar Hills in 2020.

⁸ Motion 15866

⁹ Under KCC 10.30.020.E.1, County solid waste facilities may accept small quantities of C&D waste when it is transported by vehicles or trailers without mechanized dump beds (e.g., a typical pickup truck) or when it is incidentally included in loads of municipal solid waste (e.g., a person disposes of a few roofing shingles in their curbside cart).

¹⁰ 2019 Comprehensive Solid Waste Management Plan

¹¹ "Material recovery facility" or "MRF" means any facility that processes for transport mixed C&D waste or source separated solid waste for the purpose of recycling (K.C.C. 10.04.020.GGG)

Table 1. Designated Facilities for C&D Waste

Construction and Demolition Material Facility	Location
Black River Recycling & Transfer Station (Republic Services)	501 Monster Road, Renton
Cascade Recycling Center (Waste Management)	14020 NE 190 th , Woodinville
Eastmont Transfer & Recycling Station (Waste Management)	7201 W Marginal Way SW, Seattle
Recycle Northwest (Waste Management)	701 2 nd Street NW, Auburn
DTG Seattle	7201 E Marginal Way S, Seattle
DTG Renton	701 SW 34 th St, Renton
DTG Woodinville	8610 219 th St SE, Woodinville
DTG Maltby	8610 219 th St SE, Woodinville
Maltby Container & Recycling	20225 Broadway Ave, Snohomish
Recovery 1 (DTG)	1805 Stewart St, Tacoma
United Recycling Seattle	74 S Hudson St, Seattle
United Recycling Snohomish	18827 Yew Way, Snohomish

Current C&D Processing and Disposal Requirements. King County Code outlines requirements for C&D waste processing and disposal, and states that the purpose of the C&D waste chapter (K.C.C. 10.30) is "to assure that there will be C&D disposal facilities to serve King County, that in accordance with the comprehensive solid waste management plan, C&D is recycled to the maximum extent feasible, that the Cedar Hills regional landfill may continue to be dedicated to receiving municipal solid waste (MSW), and that C&D disposal is subject to King County's strict environmental controls."

Generator, Handler, and Collector Responsibilities. Under the current system, all generators, handlers and collectors of **mixed and nonrecyclable C&D waste** generated within the County's jurisdiction shall deliver or ensure delivery to a designated C&D receiving facility.¹² The County's jurisdiction covers the 37 cities that have executed interlocal agreements to participate in the county's solid waste system, which excludes Seattle and Milton, and the unincorporated areas. **Recyclable C&D materials** may be transported to any C&D recycling facility or to a recycling market in or outside of King County.¹³

C&D Receiving Facility Responsibilities. King County Code requires the Division Director to develop, publish, and update on the Division's website a list of readily recyclable C&D materials that are banned from landfill disposal by a C&D receiving facility.¹⁴ The current "Director's List" bans the following materials from disposal:

- Concrete, asphalt paving and bricks, unpainted, without a hazardous constituent, and not attached to other materials;

¹² K.C.C. 10.30.020.A

¹³ K.C.C. 10.30.020.C

¹⁴ K.C.C. 10.30.020.G

- Metal, ferrous and nonferrous - includes composite, multi-metal products or products with nonmetal contaminants but metal content must be more than 90 percent by weight of the material;
- Cardboard - includes with tape, staples, and other fasteners and is dry and free of contamination such as paint, grease, grime or dirt;
- Unpainted new construction gypsum scrap that is dry and does not have adhering spackling compound or excessive water damage that would prevent recycling; and
- Unpainted/untreated wood - excludes particle board and laminated veneer wood.

The DFA between the C&D receiving facilities and the County designates the facility to receive C&D waste and sets forth the terms and conditions under which it may be received, processed, recycled, and disposed. Attachment 6 to this staff report outlines the major components of the C&D waste system as they exist in current code and the DFA that was approved by Ordinance 18166 (including a unilateral amendment executed with the facilities).

Current Enforcement of C&D Processing and Disposal Requirements. According to the 2020 Annual Report for the Solid Waste Division, prior to 2020, the Division contracted with the King County Sheriff's Office to assist in enforcing the C&D recycling and disposal regulations. Beginning in 2020, a C&D enforcement lead in-house at the Division was used to ensure C&D waste is properly sorted and sent to approved disposal facilities for recycling. Division staff initiate enforcement activities on both generators, handlers and collectors of C&D waste, as well as the C&D receiving facilities that accept the waste.

Generators, Handlers and Collectors of C&D waste. Executive staff indicate that enforcement activities encompass outreach and education in the field, monitoring new construction permits and reaching out to contractors, as well as monitoring shipments of C&D on the highways, in particular across I-90, to identify potential loads that may be headed to one of two unapproved landfills located in Eastern Washington. According to Executive staff, enforcement staff typically initially educate and enforce with the contractor at the jobsite, but in some cases, the collector may need to be educated and enforced against - for example, if the collector provides a single container to the jobsite and directs mixed C&D waste to be shipped to a transfer station that lacks recycling capabilities.

C&D Receiving Facilities. The current DFAs with C&D receiving facilities outline the terms under which the facility may accept C&D waste, including, but not limited to: required recordkeeping, what constitutes acceptable processing and disposal, required customer notification when a load does not meet outlined conditions, enforcement activities such as waste sampling and site visits, and what constitutes noncompliance. Executive staff indicate that, for transfer facilities, enforcement staff monitor compliance through routine on-site inspections, where they observe loads over a set period of time and compare their findings to the facility's recent records on load observations. For MRFs, enforcement staff have the right to access, inspect and sample from the residual streams at the end of processing lines, as well as materials diverted for landfill disposal prior to processing to monitor compliance with recycling requirements.

King County Code allows for the Solid Waste Division Director to determine when a facility is not in compliance and may suspend the owner's right to accept mixed and nonrecyclable C&D waste during a period of noncompliance.¹⁵ Executive staff indicate that since 2015, no agreements have been terminated for cause, but that two have had temporary suspensions.

Civil penalties. Violations are subject to enforcement authority under K.C.C. 10.30.030, which authorizes the Division Director to enforce the C&D code chapter in accordance with applicable federal law, as well as make lawful inspections of the premises or vehicles of any person suspected of violating the C&D regulations. Any person who violates the C&D code requirements or who, by any act or omission, aids or abets such a violation is subject to civil penalties in K.C.C. Title 23. Under K.C.C. Title 23, the civil fine for a violator with no previous similar code violations is \$100. For a violator with two or more previous violations of K.C.C. Title 10 within the past twelve months, the civil fine is double the rate of the previous penalty.

C&D in the 2020 Strategic Climate Action Plan. The adopted 2020 Strategic Climate Action Plan (2020 SCAP)¹⁶ included the following two targets associated with C&D recycling, along with a series of priority actions:

- *Performance Measure GHG 20:* By 2025, achieve an 85% C&D materials diversion rate from building development sites across King County, excluding Seattle and Milton. By 2030, achieve zero waste of C&D materials resources with economic value. According to the 2020 SCAP, the countywide recycling diversion rate of C&D material in 2017 was 80%.
- *Performance Measure GHG 22:* Minimum 80% C&D materials diverted from landfills from County capital projects; 85% diversion by 2025; and zero waste of resources with economic value by 2030. The 2020 SCAP indicates that for completed projects in 2018 that reported on C&D diversion information, the average C&D diversion rate was 84% diversion and a total of 123,000 tons, and, in 2019, the average diversion rate was 87%.

The 2020 SCAP included a series of priority actions related to proposing strong C&D recycling codes. According to Executive staff, the Regional Code Collaboration has developed a C&D code template for permitting jurisdictions to adopt at local jurisdiction discretion, which includes language to align a permitting department's policies and outreach with existing King County C&D code and potential amendments. The King County Department of Local Services is planning to propose adoption of this code language in 2022.

C&D Tip Fee Surcharge. Ordinance 18166 imposed a \$4.25 per ton fee on the disposal of C&D waste generated in the County's jurisdiction for the purpose of funding Division costs to manage the C&D recycling and disposal program.¹⁷ Executive staff indicate that during the 2019-2020 biennium, approximately \$1.7 million was generated in C&D fees.

¹⁵ K.C.C. 10.30.020.B

¹⁶ Motion 15866

¹⁷ K.C.C. 4A.670.300

ANALYSIS

In brief, Proposed Ordinance 2020-0243 would:

- Add language to the C&D code (K.C.C. 10.30) placing explicit responsibility on the generators, handlers, and collectors of C&D waste to send C&D loads to the proper facilities and including in code the conditions for use of transfer facilities;
- Expand the definition of C&D receiving facilities to include intermodal facilities and landfills. Use of intermodal facilities and landfills would be limited to "eligible C&D demolition projects" in accordance with a waste diversion plan approved by the County and only nonrecyclable C&D waste would be allowed to be sent via direct delivery; and
- Authorize the Executive to enter into Designated Facility Agreements (DFAs) with C&D receiving facilities using an updated agreement template dated May 22, 2020 (Attachment A to PO 2020-0243).

The transmittal letter indicates that the Department of Natural Resources and Parks engaged with stakeholders in the C&D industry, including contractors, haulers, and landfill operators of recycling facilities, and input from all parties was incorporated into the proposed legislation.

The next subsections of the staff report provide additional information about each of these proposed changes.

Explicit Responsibilities of Generators, Handlers and Collectors. As noted previously, current code language requires all generators, handlers and collectors of mixed and nonrecyclable C&D waste generated within the county jurisdiction to deliver to designated C&D receiving facilities. However, current code does not include other obligations of generators, handlers and collectors.

Executive staff indicate that mixed C&D waste loads are intended to go to a material recovery facility (MRF) or a transfer facility with recycling capabilities so that the recyclable materials may be sorted out. The proposed ordinance would add language to K.C.C. 10.30.020 specifying that a generator, handler or collector of mixed C&D waste generated within the county's jurisdiction may not deliver, or cause delivery of, a load of ***mixed C&D waste*** to a C&D receiving facility that is a ***transfer facility*** unless the generator, handler or collector:

- Ensures that the load contains, based on visual inspection at the transfer station, no more than twenty percent of the readily recyclable C&D materials banned from landfill disposal; or
- Confirms before or upon delivery that the transfer facility shall transfer the load to a C&D receiving facility that is a material recovery facility or shall otherwise manage the load to remove materials banned from landfill disposal, and receives documentation from the transfer facility.

The proposed code language is consistent with a unilateral amendment to the DFAs executed with C&D receiving facilities that requires, among other things, the transfer facilities to notify the handler/collector, and the generator (if known), that the load contains more than twenty percent of the recyclable C&D materials banned from disposal.

The proposed ordinance would not change that loads of **recyclable C&D materials** would still be allowed to go to **any C&D recycling facility or to a recycling market in or outside of King County**.

Allow Intermodal Facilities and Landfills to Become C&D Receiving Facilities. In current code, only material recovery facilities (MRFs) and transfer stations, or a combination MRF and transfer station, can become C&D receiving facilities through a DFA with the County. Executive staff indicate that about two years ago, the Division initiated a pilot approach whereby projects that develop an on-site recycling plan would be allowed to do direct disposal. Executive staff state that while the pilot was not widely promoted, it helped to better define what to include in the proposed ordinance and transmitted Designated Facility Agreement.

The proposed ordinance would expand the definition of C&D receiving facilities to also include intermodal facilities and landfills. An intermodal facility is defined as "any facility operated for the purpose of transporting closed containers of waste from one mode of transportation to another and the containers are not opened for further treatment, processing or consolidation of waste."¹⁸

However, under the proposed ordinance, only an "eligible C&D demolition project" may use **intermodal facilities and landfills** for the disposal of **nonrecyclable C&D waste** and only in accordance with a waste diversion plan. The proposed ordinance would limit eligible C&D demolition projects to projects where buildings and other structures are demolished within a contiguous property or within a plat of consolidation and the square footage of building and structure space that will be demolished therein exceeds six thousand feet.

In order for an eligible C&D demolition project to send nonrecyclable C&D waste to an intermodal facility or landfill, the proposed ordinance would require the generator, which includes but is not limited to the property owner or demolition contractor, to submit to the Division a waste diversion plan that:

- Shows that "C&D handling is planned in a manner that maximizes recovery of readily recyclable C&D materials banned from landfill disposal";
- Lists the proposed intermodal facilities and landfills that will receive nonrecyclable C&D waste; and
- Reflects "the generator's consideration of the ability of designated material recovery facilities to process mixed C&D waste generated during the eligible C&D demolition project."

The proposed ordinance requires that, within fifteen calendar days, the Division Director approve or deny the waste diversion plan by letter or email, and that any denial include

¹⁸ K.C.C. 10.04.020.ZZ

the reasons for denial. The generator submitting the waste diversion plan would have the opportunity to revise and resubmit a plan for reconsideration.

Additionally, under the proposed ordinance, for each eligible C&D demolition project with an approved waste diversion plan, the generator would also be required to submit a waste diversion report to the Division within sixty days following the completion of demolition activities that verifies compliance with the waste diversion plan, accompanied by receipts from the C&D receiving facilities and recycling facilities where the C&D materials were shipped.

According to Executive staff, the change to allow intermodal facilities and landfills to become C&D receiving facilities was initially requested by the disposal companies (Waste Management, Republic, CleanScapes) and demolition contractors. Executive staff indicate that while it is unclear exactly how many projects would seek approval for direct disposal to intermodal facilities or landfills should the ordinance be approved by the Council, the weekly reviews of the Construction Monitor (database of permits for the region) yields demolition projects over 6,000 square feet about once every two weeks. Executive staff further state the direct delivery allowance under the proposed ordinance is particularly applicable to large developments, such as the Sound Transit project, which involves the razing of large tracts of land.

Executive staff have confirmed that this legislation would not change what is allowed to be delivered to County facilities and that the Division has no intention of allowing C&D waste to be directly disposed at the Cedar Hills landfill.

Enforcement of Use of Intermodal Facilities and Landfills. The proposed ordinance would allow the Division Director, in their sole discretion, to prohibit any person who violates the requirements for direct delivery of nonrecyclable C&D waste to intermodal facilities or landfills from using those facilities for a period not to exceed six months. A person receiving a notice of noncompliance would be allowed to submit a written request for reconsideration to the Division Director within fifteen calendar days of the date of the notice. The proposed ordinance would require that the Division Director promptly issue a final decision, which would be appealable as provided in K.C.C. 20.22.080.

There are two enforcement issues that potentially may occur with the legislation as transmitted:

- 1) Potential use of intermodal facilities and landfills by unauthorized users: The transmitted DFA (Attachment A to PO 2020-0243) would allow intermodal facilities and landfills to accept C&D waste from eligible C&D demolition projects. However, the DFA language did not explicitly require an intermodal facility or landfill to check that they were accepting waste from an eligible C&D demolition project with an approved waste diversion plan. The transmitted DFA would require these facilities to submit to the Division a monthly report that provides the date, project location, and weight of shipment for each direct shipment received from demolition projects within the county's jurisdiction. Thus, enforcement against the generator, handler or collector could occur, but only after disposal has already occurred.

A similar possibility may occur with those generators, handlers, and collectors that have been suspended for violating the requirements for direct delivery of nonrecyclable C&D waste to intermodal facilities or landfills. The transmitted DFA would require the Division to notify the facilities of suspensions of generators, handlers or collectors. Under the transmitted DFA, the intermodal facilities and landfills would be responsible with comparing customer lists on a monthly basis and alerting the Division if any suspended generator, handler or collector is using the facility. As above, disposal has already occurred.

- 2) Potential disposal of recyclable or mixed C&D waste: As noted previously in the staff report, the proposed ordinance would only allow nonrecyclable C&D waste to be delivered directly to a C&D receiving facility that is an intermodal facility or landfill. However, once waste containers are taken from a jobsite to the intermodal facility or landfill, the containers are typically not opened until the final disposal destination. If a container included recyclable C&D waste, it therefore may be difficult to know if it was disposed.

Executive staff indicate that, while they do not have jurisdiction to enter job sites in incorporated cities, site access has not been an issue in enforcement efforts to date. Executive staff expect to enforce the waste diversion plans by observation from public areas, requesting access to the sites, and review of publicly available permit records for construction and demolition. Additionally, Executive staff note that they expect many of the eligible C&D demolition projects to be owned by public agencies or public companies, which are typically cooperative in working with the Division to ensure compliance.

New DFA Template. The proposed ordinance would also authorize the Executive to enter into agreements with C&D receiving facilities, substantially in the form of Attachment A to this ordinance, which is an updated DFA template containing provisions for intermodal facilities and landfills.

Attachment 6 to this staff report provides additional details about changes made in the transmitted DFA template and outlines the major components of the C&D waste system as they exist in current code and the DFA that was approved by Ordinance 18166¹⁹ with the proposed ordinance and transmitted DFA template.

The current DFAs already executed with the facilities are continuous and do not expire. Executive staff indicate they will attempt to get all facilities to execute the updated agreement but will allow facilities to renew existing agreements if necessary.

AMENDMENT

Council staff identified inconsistent usage of terms and other ambiguities in both the current code and the transmittal. At Councilmember direction, Council staff worked with Executive staff to develop language to address these issues.

¹⁹ Including the unilateral amendment

Striking Amendment S1 would make clarifying edits to the existing C&D code (K.C.C. 10.30) and the proposed ordinance that were developed in collaboration with Executive staff. S1 would replace the transmitted DFA (dated May 22, 2020) with an updated DFA (dated June 14, 2021) that was also developed with Executive staff.

Additionally, as noted previously in the staff report, the transmitted DFA did not explicitly require an intermodal facility or landfill to check that they were accepting waste from an eligible C&D demolition project with an approved waste diversion plan. Striker S1 would add clarifying language that intermodal facilities and landfills are approved to accept C&D waste only from eligible C&D demolition projects and if the facility has confirmation of an approved waste diversion plan either from the Division or upon receipt of a copy of the waste diversion plan prior to accepting the waste.

S1 would also require the Executive to file a report with the Council that describes the C&D enforcement activities undertaken by the Division in the first year after the ordinance is effective and would change the effective date of the ordinance to January 1, 2022.

Attachment 6 to this staff report compares the existing C&D system with the changes proposed by PO 2020-0243 and Striking Amendment S1.

Title Amendment T1 would conform the title to the changes made by Striking Amendment S1.

INVITED

- Pat McLaughlin, Director, Solid Waste Division
- James Neely, Environmental Programs Managing Supervisor, Solid Waste Division

ATTACHMENTS

1. Proposed Ordinance 2020-0243 (and its attachments)
2. Striking Amendment S1 (and Updated DFA, dated June 14, 2021)
3. Amendment T1
4. Transmittal Letter
5. Fiscal Note
6. Summary Matrix Comparing Existing C&D System, PO 2020-0243, and Striking Amendment S1