

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: March 2, 2010

RE: Analysis for Ordinances Amending  
the Zoning Code Text

**ORDINANCE NOS. BL2010-634, BL2010-635 & BL2010-637** (HUNT & TOLER) – These three ordinances amend the restrictions in the zoning code pertaining to recycling facilities, and create a new land use for construction/demolition waste processing (project-specific) as a use permitted with conditions (PC) in all zoning districts. The goal of these ordinances is to make it easier to recycle construction and demolition debris to avoid sending this material to the landfill.

The Zoning Code currently allows recycling facilities as a PC use only in the industrial districts. A recycling facility is defined in the Zoning Code as any facility that separates, processes, converts, treats, or otherwise prepares non-putrescible waste for recycling. Non-putrescible waste consists of material that is not capable of decomposing. Such facilities are required to meet certain conditions in order to operate as a recycling facility. These conditions include the following:

1. A minimum lot size of one acre;
2. A building setback of at least 150 feet from a residential zoning district or legally occupied residential structure;
3. Driveway access can be from a local street as long as the street is not bounded by any residential zoning district from the driveway to an intersection with a collector or major street;
4. Opaque fencing at least eight feet in height is required along all zoning districts permitting residential uses. For facilities not adjacent to zoning districts permitting residential uses, the entire facility must be enclosed by an eight-foot tall chain link fence;
5. All sorting and separation activity must take place within an enclosed structure;
6. The enclosed areas of recycling facilities must have concrete floors, and high traffic areas around the facilities must be paved;
7. The hours of operation are limited from 7:00 a.m. to 6:00 p.m. for any facility adjacent to a zoning district permitting residential uses; and
8. Light and glare must be directed on-site for facilities adjacent to a zoning district permitting residential uses.

The requirement that the recycling operations take place entirely within an enclosed structure has acted as a barrier to the opening of these facilities, which has likely resulted in more debris being taken to landfills.

**Ordinance No. BL2010-634** would allow construction/demolition (“C&D”) landfills to do on-site recycling as an accessory use. This recycling activity would be allowed outside. Construction/demolition landfills already cannot be located within 150 feet of a residentially-zoned property, and this ordinance makes no modification to the setback requirements.

**Ordinance No. BL2010-635** adds construction/demolition waste processing (project specific) as a use permitted with conditions in all zoning districts. This will allow property owners who are constructing or demolishing a structure to engage in recycling on-site, or off-site as long as the off-site location is within ¼ mile of the project site. As stated above, the zoning code currently requires that all construction/demolition material be taken to a C&D landfill or to a designated recycling facility.

Project specific C&D waste processing sites could only recycle waste generated from the project property. No other waste could be brought in from other properties. C&D waste would include discarded materials resulting from construction, remodeling, or demolition that are generally considered to be water soluble and non-hazardous in nature, such as steel, glass, brick, sheetrock, tile, carpeting, concrete, lumber, etc., as well as vegetation cleared from the property. There would be no minimum lot size for this activity in non-residential zoning districts, but lots located within residentially-zoned districts would have to be at least one acre in size or ten times the minimum lot size permitted by the zoning district, whichever is less. All applicants for a project specific C&D waste processing use would be required to submit a very detailed “waste reduction and recycling plan” to the director of public works and the director of codes administration. The plan must identify a waste manager with round-the-clock contact information, the type and quantity of materials to be recycled, the frequency of collection, and the method of storage. Applicants would also be required to provide a letter of credit to ensure performance and compliance.

The zoning administrator would be required to notify the district councilmember upon the filing of an application for a project specific recycling facility if the proposed use is within 1,000 feet of an agricultural or residential zoning district. A property would be considered inactive if no construction/demolition activity has taken place on the property within six months. No waste processing activities could continue to occur if a site is declared inactive until a new application is approved.

This ordinance should be amended to correct several typographical and minor grammatical errors.

**Ordinance No. BL2010-637** would delete the requirement in the Zoning Code that the compacting, sorting, processing or storage of materials at recycling facilities take place entirely within an enclosed building.

The codes department recommends that this ordinance be amended to require recycling activity to continue to take place within an enclosed facility if it is located within 1,000 feet of certain residentially-zoned districts.

These three ordinances have been approved by the planning commission.

**ORDINANCE NO. BL2010-636** (LALONDE, JAMESON & WILHOITE) – This zoning text change would eliminate the historic bed and breakfast overlay district and would make such use a special exception (SE) and permitted (P) use in certain zoning districts. Prior to August 2005, historic bed and breakfast establishments were permitted by special exception. In response to a particular establishment, the council enacted Ordinance No. BL2005-701 to remove historic bed and breakfast establishments from the jurisdiction of the board of zoning appeals and place it solely with the council through the creation of a new historic bed and breakfast homestay zoning overlay district. According to the planning department staff analysis, there were eight historic bed and breakfast establishments approved prior to the enactment of the 2005 ordinance, but there has only been one approved since.

This ordinance essentially reinstates bed and breakfast homestays as a special exception use in the residential and less dense office districts, and as a use permitted by right in the mixed-use, office/multi-family, and commercial districts. The districts where the use would be permitted by right basically mirror those where hotels/motels are permitted by right. The conditions for those districts in which the use would be a special exception are similar to the conditions for the current overlay. The historic zoning commission must approve the existing structure, as well as any future exterior improvements. The property must be owner-occupied, and meal service would be restricted to overnight guests only. The fire marshal must also certify that the structure is safe for operation as a bed and breakfast.

All bed and breakfast special exception uses would first have to be approved by the council by resolution before being considered by the board of zoning appeals. The council would have 60 days to act on a request for a historic bed and breakfast upon being notified by the zoning administrator that an application has been filed. Failure by the council to act on the request within the 60 day period results in the request being deemed approved by the council. If the council disapproves the location, the board of zoning appeals will not consider the application.

There are a few notable differences in the conditions under the new special exception provisions as opposed to the overlay district. As a special exception use, a historic bed and breakfast homestay would only need to be designated by the Metropolitan historic zoning commission as a “historically significant structure.” On the other hand, the overlay district requires that the structure be eligible for listing on the National Register of Historic Places, have played a role in history, or demonstrate a mastery of craftsmanship. In addition, this ordinance would increase the number of permitted bedrooms from three to four. The ordinance would also allow the establishment to be transferred to another owner without obtaining approval from the board of zoning appeals, and would allow a larger, externally-illuminated sign. Finally, no historic home event would be allowed on the property without separate approval from the board of zoning appeals.

This ordinance has been deferred indefinitely by the planning commission.