

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 08-1183A
CODE TITLE V, SOLID WASTE, TO ADD	)	
CHAPTER 5.10, REGIONAL SOLID WASTE	)	Introduced by Michael Jordan, Chief
MANAGEMENT PLAN, TO IMPLEMENT THE	)	Operating Officer, with the concurrence of
REQUIREMENTS OF THE 2008-2018	)	David Bragdon, Council President
REGIONAL SOLID WASTE MANAGEMENT	)	
PLAN	)	

WHEREAS, the Metro Council adopted Ordinance No. 95-624, For the Purpose of Adopting the Regional Solid Waste Management Plan, on November 30, 1995;

WHEREAS, Metro has completed an updated 2008-2018 Regional Solid Waste Management Plan (RSWMP) to provide the Portland metropolitan area with policy and program direction for the next decade;

WHEREAS, ORS Chapter 459 requires Metro to prepare a Waste Reduction Program for the region and to submit the Waste Reduction Program to the Oregon Department of Environmental Quality for approval;

WHEREAS, Metro has included the Waste Reduction Program in the RSWMP;

WHEREAS, Metro intends to identify the specific enforceable components of the Waste Reduction Program and to provide a method for enforcing those components through changes to the Metro Code; and

WHEREAS, the Metro Council hereby approves of the amendments to Metro Code Title V, Solid Waste, to add the new Chapter 5.10, Regional Solid Waste Management Plan, attached hereto as Exhibit A, pursuant to the RSWMP; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Title V, Solid Waste, is amended to add Metro Code Chapter 5.10, Regional Solid Waste Management Plan, attached hereto as Exhibit A.

ADOPTED by the Metro Council this 24th day of July 2008.

Officially Approved

Consolidated Metropolitan

Metro Council

Metro Council

Approved Officialmente


Attest:

Christina Billington, Recording Secretary

Approved as to Form:

Daniel B. Cooper, Metro Attorney

David Bragdon, Council President



CHAPTER 5.10

REGIONAL SOLID WASTE MANAGEMENT PLAN

SECTIONS	TITLE
5.10.010	Definitions
5.10.020	Authority, Jurisdiction, and Purpose
5.10.030	Adoption of RSWMP
5.10.040	Application of Chapter
5.10.050	RSWMP Requirements
5.10.060	RSWMP Amendments
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5.10.230	Regional Service Standard Elements
5.10.240	Alternative Program <u>and Performance Standard</u>

5.10.010 Definitions

For the purpose of this chapter the following terms shall have the meaning set forth below:

- (a) "Alternative Program" means a solid waste management service proposed by a local government that differs from the service required under Section 5.10.230.
- (b) "Compliance" and "comply" shall have the meaning given to "substantial compliance" in this Section.
- (c) "Compost" shall have the meaning assigned thereto in Metro Code Section 5.01.010.
- (ed) "DEQ" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(~~e~~e) "Director" means the Director of Metro's Solid Waste and Recycling Department.

(~~e~~f) "Local Government" means any city or county that is within Metro's jurisdiction, including the unincorporated areas of Clackamas, Multnomah, and Washington Counties.

(~~f~~g) "Local Government Action" means adoption of any ordinance, order, regulation, contract, or program affecting solid waste management.

(~~g~~h) "RSWMP" means the Regional Solid Waste Management Plan adopted by the Metro Council and approved by the DEQ.

(~~h~~i) "RSWMP Requirement" means the portions of the RSWMP that are binding on local governments as set forth and implemented in this chapter.

(~~i~~j) "Standard Recyclable Materials" means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.

(~~j~~k) "Substantial compliance" means local government actions, on the whole, conform to the purposes of the performance standards in this chapter and any failure to meet individual performance standard requirements is technical or minor in nature.

(l) "Waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(~~k~~m) "Waste Reduction Hierarchy" means first, reduce the amount of solid waste generated; second, reuse material for its originally intended purpose; third, recycle or compost material that cannot be reduced or reused; fourth, recover energy from material that cannot be reduced, reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and fifth, landfill solid waste that cannot be reduced, reused, recycled, composted or from which energy cannot be recovered.

(~~l~~n) "Waste Reduction Program" means the Waste Reduction Program required by ORS 459.055(2)(a), adopted by the Metro Council as

part of the RSWMP, and accepted and approved by the DEQ as part of the RSWMP.

(~~m~~o) "Yard Debris" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

#### 5.10.020 Authority, Jurisdiction, and Purpose

(a) Metro's Solid Waste planning and implementing authority is established under the Metro Charter, the Constitution of the State of Oregon, and ORS Chapters 268 and 459.

(b) This chapter implements the RSWMP requirements. The RSWMP shall include the Regional Solid Waste Management Plan, including without limitation the Waste Reduction Program.

(c) This chapter does not abridge or alter the rights of action by the State or by a person that exist in equity, common law, or other statutes.

#### 5.10.030 Adoption of RSWMP

Metro has adopted the RSWMP, copies of which are on file at Metro offices, and shall implement the RSWMP as required by this chapter.

#### 5.10.040 Application of Chapter

This chapter shall apply to all portions of Clackamas, Washington, and Multnomah Counties within Metro's jurisdiction.

#### 5.10.050 RSWMP Requirements

The RSWMP is a regional plan that contains ~~mandatory~~ requirements that are binding on local governments of the region as well as recommendations that are not binding. The RSWMP requirements are set forth in ~~Metro Code Chapter 5.10.~~ this chapter. This chapter ensures that local governments have a significant amount of flexibility as to how they meet requirements. Standard methods of compliance are included in the chapter, but these standard methods are not the only way a local government may show compliance. Performance standards also are included in most sections. If local governments demonstrate to Metro that they meet the performance standard, they have met the requirement of that section.

5.10.060 RSWMP Amendments

(a) The Chief Operating Officer shall submit all proposed amendments to the RSWMP to the Council by ordinance for adoption.

(b) Once the Council adopts an amendment to the RSWMP, the Chief Operating Officer shall submit the amended RSWMP to the DEQ for approval. If the amendment is to the Waste Reduction Program, the Chief Operating Officer shall submit the amended RSWMP to the DEQ for acceptance and approval.

(c) The Chief Operating Officer may correct technical mistakes discovered in the RSWMP administratively without petition, notice, or hearing.

5.10.070 Severability

(a) The sections of this chapter shall be severable and any action by any state agency or judgment court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.

(b) The sections of the RSWMP shall also be severable and shall be subject to the provisions of subsection (a) of this section.

5.10.080 Administrative Procedures ~~and Performance Standards~~

(a) The Chief Operating Officer may issue administrative procedures ~~and performance standards~~ governing the obligations under this chapter, including but not limited to procedures ~~and performance standards~~ for the suspension of a material from the definition of standard recyclable materials and for additional requirements of a recycling education and promotion program.

(b) The Chief Operating Officer may issue administrative procedures ~~and performance standards~~ to implement all provisions of this chapter.

(c) The Chief Operating Officer shall issue or substantially amend the administrative procedures ~~and performance standards~~ for this chapter only after providing public notice and the opportunity to comment on the proposed language.

(d) The Chief Operating Officer may hold a public hearing on any proposed new administrative procedure and performance standard or on any proposed amendment to any administrative procedure ~~and performance standard~~ if the Chief Operating Officer determines that there is sufficient public interest in any such proposal.

### **Compliance Procedures**

#### 5.10.110 Conformity to the RSWMP

Local governments shall not adopt any ordinance, order, regulation, or contract affecting solid waste management that conflicts with the RSWMP requirements implemented by this chapter.

#### 5.10.120 Compliance with the RSWMP

(a) The purpose of this section is to establish a process for determining whether local government actions comply with the RSWMP requirements. The Council intends the process to be efficient and cost effective and to provide an opportunity for the Metro Council to interpret the requirements of the RSWMP. Where the terms "compliance" and "comply" appear in this chapter, the terms shall have the meaning given to "substantial compliance" in Section 5.10.010.

(b) Local government actions shall comply with the RSWMP requirements. The Chief Operating Officer shall notify local governments of the compliance date of all RSWMP requirements. On or before the compliance date, local governments shall certify in writing to the Chief Operating Officer that their local government actions comply with the RSWMP requirements.

(~~b~~c) Commencing on November 1, 2010, and on November 1 each year thereafter, the Director shall submit a report to the Chief Operating Officer on local government action compliance with the RSWMP requirements for the Metro fiscal year ending the previous June 30. The report shall include an accounting of local government actions that do not comply with each requirement of the RSWMP. The report shall recommend action that would bring a local government into compliance with the RSWMP requirements and shall advise the local government whether it may seek an extension pursuant to Section 5.10.130 or an exception pursuant to Section 5.10.140. The report also shall include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the RSWMP objectives.

(~~e~~d) Commencing on or after November 1, 2010, and on or after November 1 each year thereafter, the Chief Operating Officer shall provide each local government with a letter informing the local government whether its actions comply or do not comply with the RSWMP requirements. The Chief Operating Officer shall provide each local government that is not in compliance with the RSWMP requirements with the Director's report.

(~~e~~e) A local government provided with a report shall respond to the report within 60 days from the date of the report. The response shall contain:

- (1) An agreement to comply with the report recommendations;
- (2) A request for an extension under Section 5.10.130; or
- (3) A request for an exception under Section 5.10.140.

(~~e~~f) Within 30 days of receiving the local government's response, the Chief Operating Officer shall:

- (1) If the local government agrees to comply with the report recommendations, provide a letter to the local government describing the details of the actions required of the local government for compliance; or
- (2) If the local government seeks an extension or exception, direct the local government to follow the procedures set forth in Section 5.10.130 or Section 5.10.140.

(~~f~~g) If the local government fails to file a response or refuses to comply with the report recommendations, the Chief Operating Officer may proceed to Council review under Section 5.10.150. A local government may seek Council review under Section 5.10.150 of a report of noncompliance under this section.

#### 5.10.130 Extension of Compliance Deadline

(a) A local government may seek an extension of time for compliance with a RSWMP requirement by filing a written request for an extension with the Director.

(b) The Director may grant an extension of the compliance deadline if the local government's written request demonstrates that: (1) the local government is making progress toward accomplishment of its compliance with the RSWMP requirement; or (2) the local government has good cause for failure to meet the deadline for compliance.

(c) The Director may establish terms and conditions for the extension to ensure that compliance is achieved in a timely and orderly fashion and that local government actions during the extension do not undermine the ability of the region to implement the RSWMP. A term or condition shall relate to the requirement of the RSWMP to which the Director grants the extension. The Director shall incorporate the terms and conditions into the decision on the request for extension. The Director shall not grant more than two extensions of time and shall not extend the deadline for compliance for more than one year.

(d) The Director shall grant or deny the request for extension within 30 days of the date of the request and shall provide a copy of the decision to the local government.

(e) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.

(f) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.

(g) The Chief Operating Officer's order regarding an extension is a final order and shall not be subject to Metro Code Chapter 2.05, Procedure for Contested Cases. A local government may appeal the order by filing a petition for writ of review.

#### 5.10.140 Exception from Compliance

(a) A local government may seek an exception from compliance with a RSWMP requirement by filing a written request for an exception with the Chief Operating Officer.



(b) The Chief Operating Officer shall prepare a report on the written request. The report shall recommend whether to grant or deny the exception and shall analyze whether:

- (1) The exception and any similar exceptions will prevent the Metro region from achieving the RSWMP goals;
- (2) The exception will reduce the ability of another local government to comply with the requirement; and
- (3) The local government has adopted other measures more appropriate for the local government to achieve the intended result of the requirement.

(c) The Chief Operating Officer's report may establish terms and conditions for the exception to ensure that it does not undermine the ability of Metro to implement its responsibilities under the RSWMP. Any term or condition shall relate to the requirement of the RSWMP from which the local government seeks exception.

(d) The Chief Operating Officer shall issue the report within 60 days of the date of the request. The Chief Operating Officer shall provide a copy to the local government and shall file a written request for review and public hearing with the Council President.

(e) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer's report. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing and shall publish the report at least 14 days before the public hearing.

(f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.

(g) The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for an analysis of the factors listed in subsection(b). The order shall address any testimony during the public hearing that takes exception to

the report. The Chief Operating Officer shall provide a copy of the order to the local government.

(h) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review.

#### 5.10.150 Review by Metro Council

(a) A local government may seek review of (1) the letter and report of noncompliance provided by the Chief Operating Officer under Section 5.10.120; and (2) a decision that a local government does not meet a performance standard by filing a written request for review and public hearing with the Council President.

(b) The Chief Operating Officer may seek review by the Council of any local government action that does not comply with the RSWMP requirements, this chapter, or both by filing a written request for review and public hearing with the Council President. The Chief Operating Officer shall provide a copy of the request to the local government.

(c) The Chief Operating Officer shall consult with the local government and the Director before the Chief Operating Officer determines there is good cause for a public hearing under subsection (d).

(d) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer or local government's request for review. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing.

(e) The Chief Operating Officer shall prepare a report and recommendation on the matter for consideration by the Metro Council. The Chief Operating Officer shall publish the report at least 14 days before the public hearing and provide a copy to the local government.

(f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.

(g) If the Metro Council concludes that the local government action does not violate the RSWMP requirements or

this chapter, the Council shall enter an order dismissing the matter. If the Council concludes that the local government action does violate the RSWMP requirements, this chapter, or both, the Council shall issue an order that identifies the noncompliance and directs changes in the local government action.

(h) The Council shall issue its order, with analysis and conclusions, no later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for its findings and conclusions related to compliance with this chapter. The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.

(i) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review.

#### ~~5.10.160 Penalties for Violations~~

~~The Metro Council may include one or more of the following in an order issued under this chapter:~~

~~— (a) A fine of up to \$500 per day for each day after the date of a Council order that the local government continues the violation;~~

~~(b) An order requiring the local government to comply with the RSWMP; and~~

~~(c) An order requiring the local government to comply with any provision of this chapter.~~

#### ~~5.10.170~~ 5.10.160 Technical Assistance

The Chief Operating Officer shall encourage local governments to take advantage of the programs of technical and financial assistance provided by Metro to help achieve compliance with the requirements of this chapter.

## **The Regional Service Standard**

### 5.10.210 Purpose and Intent

Local governments shall adopt and implement the regional service standard or alternative program as required by the RSWMP and as specified in this chapter and the administrative procedures. The regional service standard ensures a comprehensive and consistent level of recycling service for the region and assists the region in meeting state recovery goals.

### 5.10.220 Regional Service Standard

(a) By January 1, 2009, local governments shall implement the regional service standard either by:

- (1) Adopting the provisions of Metro Code Section 5.10.230(a) through (d); or
- (2) Adopting an alternative program that meets the performance standard and that is approved by Metro in accordance with Metro Code Section 5.10.240.

(b) The local government shall provide information related to compliance with this requirement at the Director's request or as required by the administrative procedures.

### 5.10.230 Regional Service Standard Elements

The following shall constitute the regional service standard under the RSWMP:

(a) For single-family residences, including duplexes, triplexes, and fourplexes, the local government shall:

- (1) Ensure provision of at least one (1) recycling container to each residential customer;
- (2) Ensure provision of weekly collection of all standard recyclable materials; and
- (3) Ensure provision of a residential yard debris collection program that includes weekly on-route collection of yard debris for production of compost from each residential customer or equivalent on-route collection of yard debris for production of compost if granted approval

for an alternative program under Metro Code Section 5.10.240.

(b) For multi-family residences, the local government shall ensure provision of regular collection of standard recyclable materials for each multi-family dwelling community having five (5) or more units.

(c) For businesses, the local government shall ensure provision of regular collection of standard recyclable materials.

(d) For education and outreach, the local government shall ensure provision of a recycling education and promotion program to all waste generators that supports the management of solid waste according to the waste reduction hierarchy as follows:

- (1) For all waste generators:
  - A. Provide information regarding waste prevention, reusing, recycling, and composting; and
  - B. Participate in one community or media event per year to promote waste prevention, reuse, recycling, or composting.
- (2) For single-family residences and businesses:
  - A. For existing customers, provide education information at least four (4) times a calendar year; and
  - B. For new customers, provide a packet of educational materials that contains information listing the materials collected, the schedule for collection, the proper method of preparing materials for collection, and an explanation of the reasons to recycle.
- (3) For multi-family residences:
  - A. Provide waste reduction and recycling educational and promotional information designed for and directed toward the residents of multifamily dwellings as

frequently as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle, including the types of materials accepted and the proper preparation of the items; and

- B. Provide waste reduction and recycling educational and promotional information designed for and directed toward multifamily property owners and managers at least annually.

#### 5.10.240 Alternative Program and Performance Standard

(a) A local government seeking alternative program approval shall submit an application for an alternative program to the Director that contains:

- (1) A description of the existing program;
- (2) A description of the proposed alternative program; and
- (3) A comparison of the existing and alternative programs for type of materials collected, frequency of collection of material, and levels of recovery.

(b) ~~The Director shall determine whether the proposed~~A local government's alternative program ~~will~~shall perform at the same level or better ~~than~~as the regional service standard. ~~In making this determination, the Director and~~ shall ~~consider~~meet the following performance standard:

- (1) ~~Estimated participation levels;~~The alternative program shall provide for as much or more recovery of standard recyclable materials as recovered under the regional service standard;
- (2) ~~Estimated amounts of waste prevented, recycled, recovered, or disposed;~~The alternative program shall ensure that the per capita use of recycling service is the same or more than the per capita use of recycling service under the regional service standard;

- (3) The alternative program shall prevent waste generation at the same level or better than the waste generation prevented under the regional service standard;
- (4) ~~(3) Consistency with~~ The alternative program shall provide education and outreach to promote the waste reduction hierarchy and the source separation priority; to encourage the separation of recyclables from waste; and
- ~~(4) Economic and technical feasibility; and~~
- (5) ~~Estimated impact on other waste reduction activities.~~ The alternative program shall ensure that any innovations in the provision of recycling service are technologically and economically feasible.

(c) If the Director determines that the alternative program ~~will perform at the same level or better than the regional service~~ meets the performance standard, the Director shall approve the application. The Director may condition the approval on completion of a successful pilot program. If the Director determines that the alternative program ~~will not perform at the same level or better than the regional service~~ does not meet the performance standard, the Director shall deny the application. The Director shall decide whether to approve or deny the application within 60 days of the date the Director received the application or, if the Director conditions approval on successful completion of a pilot program, within 60 days of the conclusion of the pilot program. The Director shall provide a copy of the decision to the local government.

(d) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.

(e) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.

(f) ~~The~~ A local government may seek Council review under Section 5.10.150 of the Chief Operating Officer's order

regarding an alternative program ~~is a final order and shall not be subject to Metro Code Chapter 2.05, Procedure for Contested Cases. A local government may appeal the order by filing a petition for writ of review~~under this section.

(g) This section does not prevent a local government from seeking an exception under Section 5.10.140.

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## **SUPPLEMENTAL STAFF REPORT**

IN CONSIDERATION OF ORDINANCE NO. 08-1183A, FOR THE PURPOSE OF AMENDING METRO CODE TITLE V, SOLID WASTE, TO ADD CHAPTER 5.10, REGIONAL SOLID WASTE MANAGEMENT PLAN, TO IMPLEMENT THE REQUIREMENTS OF THE 2008-2018 REGIONAL SOLID WASTE MANAGEMENT PLAN

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Date: July 7, 2008

Prepared by: Michelle A. Bellia  
Janet Matthews

### **BACKGROUND**

On March 27<sup>th</sup> the Metro Council tabled consideration of Ordinance 08-1183, to implement requirements of the Regional Solid Waste Management Plan, after several letters expressing opposition or concern were received from local governments. The Council subsequently directed Solid Waste and Recycling Department staff to offer local government briefings and to take the ordinance before the Metro Policy Advisory Committee for review and action.

In May and June staff provided briefings on the ordinance to elected officials in the cities of Durham and Hillsboro and to Washington County. The ordinance was revised based on discussions with local governments and went before MPAC on May 14<sup>th</sup> and June 11<sup>th</sup>. MPAC members recommended approval of a revised Ordinance 08-1183 by a vote of twelve to one; those revisions are contained in the "A" version now before the Council (and are summarized on the following page).

Ordinance No. 08-1183-A implements the Waste Reduction Program requirements contained in the 2008-2018 Regional Solid Waste Management Plan (RSWMP) by amending the Metro Code Title V Solid Waste, to add a new Chapter 5.10.

The RSWMP is a regional plan that contains binding requirements on local governments of the region as well as policy and program guidance that is not binding. The code language proposed in this ordinance clarifies the requirements of the Waste Reduction Program that are binding on local governments. The RSWMP requirements set forth in the new Metro Code Chapter 5.10 are intended to ensure local governments have a significant amount of flexibility as to how they meet requirements.

The proposed code language also provides a procedure for enforcing those requirements. The intent of the proposed process is to provide an efficient method for local governments to establish compliance with the RSWMP requirements.

### **PURPOSE OF THE CODE REVISION**

The code language is proposed for the following reasons:

1. The Waste Reduction Program Requirements Must Be Enforceable to Satisfy State Law.

Because Metro sends more than 75,000 tons of solid waste per year to a disposal site (the Columbia Ridge Landfill), ORS Chapter 459 requires Metro to prepare a solid waste reduction program for the region and to submit the Waste Reduction Program to the Oregon Department of Environmental Quality (DEQ) for approval. The DEQ reviews the Waste Reduction Program for compliance with the state law and must approve the Waste Reduction Program if it meets the statutory criteria. Chapter IV of the updated RSWMP contains the components of the Waste Reduction Program.

In reviewing an earlier version of the Waste Reduction Program, DEQ advised that the program “must have specifically enforceable components and must specify how enforcement can be accomplished.” The proposed revisions to the Metro Code identify the enforceable components of the Waste Reduction Program and provide a procedure for enforcing those components.

2. The Code Provisions Notify the Local Governments of the Specific RSWMP Provisions Requiring Compliance.

ORS Chapter 459 provides limits on local governmental authority related to the Waste Reduction Program. Specifically, ORS 459.095(1) prohibits local governments from adopting any ordinance, order, regulation or contract affecting solid waste management that conflicts with a solid waste management plan or program. The RSWMP, which includes the Waste Reduction Program, contains policy guidance as well as enforceable provisions. Once the RSWMP is adopted by the Metro Council and approved by the DEQ, any local government action that conflicts with a requirement of the Waste Reduction Program may be subject to enforcement. Including the enforceable components of the Waste Reduction Program in the Metro Code notifies the local governments of what Metro intends to enforce and allows them to avoid taking conflicting action.

## **SUMMARY OF SIGNIFICANT REVISIONS IN 08-1183-A**

5.10.010 Definitions – A definition of "substantial compliance" has been added. Where "comply" or "compliance" appear in the ordinance, these terms now carry the same meaning as "substantial compliance."

5.10.150 Review by Metro Council – This section adds a Council review, upon local government request, of an administrative decision that an RSWMP performance standard was not met

5.10.160 Penalties for Violations – This section, which contained references to fines and orders, has been stricken. (Section 5.10.150 still provides for the Council to issue an order and direct changes in local government action if they determine a violation of RSWMP requirements has occurred.)

5.10.240 Alternative Program and Performance Standard – The term "performance standard" was added in this section to clarify that Metro's approval of a proposed local alternative to the Regional Service Standard is performance-based, i.e., approved alternatives will have the same or higher level of performance as the service standard requirement.

## **ANALYSIS/INFORMATION**

1. Known Opposition: Opposition was expressed to ordinance 08-1183 in March from several local governments and haulers. Concerns centered around limitations to local control and the

penalties section of the ordinance. The 12-1 recommendation for approval from MPAC on June 11<sup>th</sup> reflects regional consensus among represented governments that the ordinance as revised is acceptable.

2. **Legal Antecedents:** Ordinance No. 95-624 (For the Purpose of Adopting the Regional Solid Waste Management Plan), adopted November 30, 1995; Metro Charter; Metro Code Title V Solid Waste; and ORS Chapters 268 and 459.
3. **Anticipated Effects:** Chapter 5.10 clarifies the distinction between the mandatory requirements of the Waste Reduction Program that are binding on local governments and those provisions of the RSWMP that are policy and program guidance. The proposed code language also provides a procedure for enforcing those requirements
4. **Budget Impacts:** No direct budget impacts; however, there may be indirect impacts from efforts to resolve compliance issues.

#### **RECOMMENDED ACTION**

Staff recommends that the Metro Council adopt Ordinance No. 08-1183A.

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\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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Daniel B. Cooper, Metro Attorney

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SECTIONS	TITLE
5.10.010	Definitions
5.10.020	Authority, Jurisdiction, and Purpose
5.10.030	Adoption of RSWMP
5.10.040	Application of Chapter
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	<b>The Regional Service Standard</b>
5.10.210	Purpose and Intent
5.10.220	Regional Service Standard
5.10.230	Regional Service Standard Elements
5.10.240	Alternative Program

5.10.010 Definitions

For the purpose of this chapter the following terms shall have the meaning set forth below:

- (a) "Alternative Program" means a solid waste management service proposed by a local government that differs from the service required under Section 5.10.230.
- (b) "Compost" shall have the meaning assigned thereto in Metro Code Section 5.01.010.
- (c) "DEQ" shall have the meaning assigned thereto in Metro Code Section 5.01.010.
- (d) "Director" means the Director of Metro's Solid Waste and Recycling Department.

(e) "Local Government" means any city or county that is within Metro's jurisdiction, including the unincorporated areas of Clackamas, Multnomah, and Washington Counties.

(f) "Local Government Action" means adoption of any ordinance, order, regulation, contract, or program affecting solid waste management.

(g) "RSWMP" means the Regional Solid Waste Management Plan adopted by the Metro Council and approved by the DEQ.

(h) "RSWMP Requirement" means the portions of the RSWMP that are binding on local governments as set forth and implemented in this chapter.

(i) "Standard Recyclable Materials" means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.

(j) "Waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(k) "Waste Reduction Hierarchy" means first, reduce the amount of solid waste generated; second, reuse material for its originally intended purpose; third, recycle or compost material that cannot be reduced or reused; fourth, recover energy from material that cannot be reduced, reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and fifth, landfill solid waste that cannot be reduced, reused, recycled, composted or from which energy cannot be recovered.

(l) "Waste Reduction Program" means the Waste Reduction Program required by ORS 459.055(2)(a), adopted by the Metro Council as part of the RSWMP, and accepted and approved by the DEQ as part of the RSWMP.

(m) "Yard Debris" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

5.10.020 Authority, Jurisdiction, and Purpose

(a) Metro's Solid Waste planning and implementing authority is established under the Metro Charter, the Constitution of the State of Oregon, and ORS Chapters 268 and 459.

(b) This chapter implements the RSWMP requirements. The RSWMP shall include the Regional Solid Waste Management Plan, including without limitation the Waste Reduction Program.

(c) This chapter does not abridge or alter the rights of action by the State or by a person that exist in equity, common law, or other statutes.

5.10.030 Adoption of RSWMP

Metro has adopted the RSWMP, copies of which are on file at Metro offices, and shall implement the RSWMP as required by this chapter.

5.10.040 Application of Chapter

This chapter shall apply to all portions of Clackamas, Washington, and Multnomah Counties within Metro's jurisdiction.

5.10.050 RSWMP Requirements

The RSWMP is a regional plan that contains mandatory requirements that are binding on local governments of the region as well as recommendations that are not binding. The RSWMP requirements are set forth in Metro Code Chapter 5.10.

5.10.060 RSWMP Amendments

(a) The Chief Operating Officer shall submit all proposed amendments to the RSWMP to the Council by ordinance for adoption.

(b) Once the Council adopts an amendment to the RSWMP, the Chief Operating Officer shall submit the amended RSWMP to the DEQ for approval. If the amendment is to the Waste Reduction Program, the Chief Operating Officer shall submit the amended RSWMP to the DEQ for acceptance and approval.

(c) The Chief Operating Officer may correct technical mistakes discovered in the RSWMP administratively without petition, notice, or hearing.

#### 5.10.070 Severability

(a) The sections of this chapter shall be severable and any action by any state agency or judgment court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.

(b) The sections of the RSWMP shall also be severable and shall be subject to the provisions of subsection (a) of this section.

#### 5.10.080 Administrative Procedures and Performance Standards

(a) The Chief Operating Officer may issue administrative procedures and performance standards governing the obligations under this chapter, including but not limited to procedures and performance standards for the suspension of a material from the definition of standard recyclable materials and for additional requirements of a recycling education and promotion program.

(b) The Chief Operating Officer may issue administrative procedures and performance standards to implement all provisions of this chapter.

(c) The Chief Operating Officer shall issue or substantially amend the administrative procedures and performance standards for this chapter only after providing public notice and the opportunity to comment on the proposed language.

(d) The Chief Operating Officer may hold a public hearing on any proposed new administrative procedure and performance standard or on any proposed amendment to any administrative procedure and performance standard if the Chief Operating Officer determines that there is sufficient public interest in any such proposal.

### **Compliance Procedures**

#### 5.10.110 Conformity to the RSWMP

Local governments shall not adopt any ordinance, order, regulation, or contract affecting solid waste management that conflicts with the RSWMP requirements implemented by this chapter.



5.10.120 Compliance with the RSWMP

(a) Local government actions shall comply with the RSWMP requirements. The Chief Operating Officer shall notify local governments of the compliance date of all RSWMP requirements. On or before the compliance date, local governments shall certify in writing to the Chief Operating Officer that their local government actions comply with the RSWMP requirements.

(b) Commencing on November 1, 2010, and on November 1 each year thereafter, the Director shall submit a report to the Chief Operating Officer on local government action compliance with the RSWMP requirements for the Metro fiscal year ending the previous June 30. The report shall include an accounting of local government actions that do not comply with each requirement of the RSWMP. The report shall recommend action that would bring a local government into compliance with the RSWMP requirements and shall advise the local government whether it may seek an extension pursuant to Section 5.10.130 or an exception pursuant to Section 5.10.140. The report also shall include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the RSWMP objectives.

(c) Commencing on or after November 1, 2010, and on or after November 1 each year thereafter, the Chief Operating Officer shall provide each local government with a letter informing the local government whether its actions comply or do not comply with the RSWMP requirements. The Chief Operating Officer shall provide each local government that is not in compliance with the RSWMP requirements with the Director's report.

(d) A local government provided with a report shall respond to the report within 60 days from the date of the report. The response shall contain:

- (1) An agreement to comply with the report recommendations;
- (2) A request for an extension under Section 5.10.130; or
- (3) A request for an exception under Section 5.10.140.

(e) Within 30 days of receiving the local government's response, the Chief Operating Officer shall:

- (1) If the local government agrees to comply with the report recommendations, provide a letter to the local government describing the details of the actions required of the local government for compliance; or
- (2) If the local government seeks an extension or exception, direct the local government to follow the procedures set forth in Section 5.10.130 or Section 5.10.140.

(f) If the local government fails to file a response or refuses to comply with the report recommendations, the Chief Operating Officer may proceed to Council review under Section 5.10.150. A local government may seek Council review under Section 5.10.150 of a report of noncompliance under this section.

#### 5.10.130 Extension of Compliance Deadline

(a) A local government may seek an extension of time for compliance with a RSWMP requirement by filing a written request for an extension with the Director.

(b) The Director may grant an extension of the compliance deadline if the local government's written request demonstrates that: (1) the local government is making progress toward accomplishment of its compliance with the RSWMP requirement; or (2) the local government has good cause for failure to meet the deadline for compliance.

(c) The Director may establish terms and conditions for the extension to ensure that compliance is achieved in a timely and orderly fashion and that local government actions during the extension do not undermine the ability of the region to implement the RSWMP. A term or condition shall relate to the requirement of the RSWMP to which the Director grants the extension. The Director shall incorporate the terms and conditions into the decision on the request for extension. The Director shall not grant more than two extensions of time and shall not extend the deadline for compliance for more than one year.

(d) The Director shall grant or deny the request for extension within 30 days of the date of the request and shall provide a copy of the decision to the local government.

(e) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.

(f) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.

(g) The Chief Operating Officer's order regarding an extension is a final order and shall not be subject to Metro Code Chapter 2.05, Procedure for Contested Cases. A local government may appeal the order by filing a petition for writ of review.

#### 5.10.140 Exception from Compliance

(a) A local government may seek an exception from compliance with a RSWMP requirement by filing a written request for an exception with the Chief Operating Officer.

(b) The Chief Operating Officer shall prepare a report on the written request. The report shall recommend whether to grant or deny the exception and shall analyze whether:

- (1) The exception and any similar exceptions will prevent the Metro region from achieving the RSWMP goals;
- (2) The exception will reduce the ability of another local government to comply with the requirement; and
- (3) The local government has adopted other measures more appropriate for the local government to achieve the intended result of the requirement.

(c) The Chief Operating Officer's report may establish terms and conditions for the exception to ensure that it does not undermine the ability of Metro to implement its responsibilities under the RSWMP. Any term or condition shall relate to the requirement of the RSWMP from which the local government seeks exception.

(d) The Chief Operating Officer shall issue the report within 60 days of the date of the request. The Chief Operating Officer shall provide a copy to the local government and shall file a written request for review and public hearing with the Council President.

(e) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer's report. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing and shall publish the report at least 14 days before the public hearing.

(f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.

(g) The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for an analysis of the factors listed in subsection(b). The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.

(h) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review.

#### 5.10.150 Review by Metro Council

(a) A local government may seek review of the letter and report of noncompliance provided by the Chief Operating Officer under Section 5.10.120 by filing a written request for review and public hearing with the Council President.

(b) The Chief Operating Officer may seek review by the Council of any local government action that does not comply with the RSWMP requirements, this chapter, or both by filing a written request for review and public hearing with the Council President. The Chief Operating Officer shall provide a copy of the request to the local government.

(c) The Chief Operating Officer shall consult with the local government and the Director before the Chief Operating

Officer determines there is good cause for a public hearing under subsection (d).

(d) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer or local government's request for review. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing.

(e) The Chief Operating Officer shall prepare a report and recommendation on the matter for consideration by the Metro Council. The Chief Operating Officer shall publish the report at least 14 days before the public hearing and provide a copy to the local government.

(f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.

(g) If the Metro Council concludes that the local government action does not violate the RSWMP requirements or this chapter, the Council shall enter an order dismissing the matter. If the Council concludes that the local government action does violate the RSWMP requirements, this chapter, or both, the Council shall issue an order that identifies the noncompliance and directs changes in the local government action.

(h) The Council shall issue its order, with analysis and conclusions, no later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for its findings and conclusions related to compliance with this chapter. The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.

(i) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review.

#### 5.10.160 Penalties for Violations

The Metro Council may include one or more of the following in an order issued under this chapter:

(a) A fine of up to \$500 per day for each day after the date of a Council order that the local government continues the violation;

(b) An order requiring the local government to comply with the RSWMP; and

(c) An order requiring the local government to comply with any provision of this chapter.

#### 5.10.170 Technical Assistance

The Chief Operating Officer shall encourage local governments to take advantage of the programs of technical and financial assistance provided by Metro to help achieve compliance with the requirements of this chapter.

### **The Regional Service Standard**

#### 5.10.210 Purpose and Intent

Local governments shall adopt and implement the regional service standard or alternative program as required by the RSWMP and as specified in this chapter and the administrative procedures. The regional service standard ensures a comprehensive and consistent level of recycling service for the region and assists the region in meeting state recovery goals.

#### 5.10.220 Regional Service Standard

(a) By January 1, 2009, local governments shall implement the regional service standard either by:

- (1) Adopting the provisions of Metro Code Section 5.10.230(a) through (d); or
- (2) Adopting an alternative program that is approved by Metro in accordance with Metro Code Section 5.10.240.

(b) The local government shall provide information related to compliance with this requirement at the Director's request or as required by the administrative procedures.

5.10.230 Regional Service Standard Elements

The following shall constitute the regional service standard under the RSWMP:

(a) For single-family residences, including duplexes, triplexes, and fourplexes, the local government shall:

- (1) Ensure provision of at least one (1) recycling container to each residential customer;
- (2) Ensure provision of weekly collection of all standard recyclable materials; and
- (3) Ensure provision of a residential yard debris collection program that includes weekly on-route collection of yard debris for production of compost from each residential customer or equivalent on-route collection of yard debris for production of compost if granted approval for an alternative program under Metro Code Section 5.10.240.

(b) For multi-family residences, the local government shall ensure provision of regular collection of standard recyclable materials for each multi-family dwelling community having five (5) or more units.

(c) For businesses, the local government shall ensure provision of regular collection of standard recyclable materials.

(d) For education and outreach, the local government shall ensure provision of a recycling education and promotion program to all waste generators that supports the management of solid waste according to the waste reduction hierarchy as follows:

- (1) For all waste generators:
  - A. Provide information regarding waste prevention, reusing, recycling, and composting; and
  - B. Participate in one community or media event per year to promote waste prevention, reuse, recycling, or composting.

- (2) For single-family residences and businesses:
  - A. For existing customers, provide education information at least four (4) times a calendar year; and
  - B. For new customers, provide a packet of educational materials that contains information listing the materials collected, the schedule for collection, the proper method of preparing materials for collection, and an explanation of the reasons to recycle.
  
- (3) For multi-family residences:
  - A. Provide waste reduction and recycling educational and promotional information designed for and directed toward the residents of multifamily dwellings as frequently as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle, including the types of materials accepted and the proper preparation of the items; and
  - B. Provide waste reduction and recycling educational and promotional information designed for and directed toward multifamily property owners and managers at least annually.

5.10.240 Alternative Program

(a) A local government seeking alternative program approval shall submit an application for an alternative program to the Director that contains:

- (1) A description of the existing program;
- (2) A description of the proposed alternative program; and
- (3) A comparison of the existing and alternative programs for type of materials collected,



frequency of collection of material, and levels of recovery.

(b) The Director shall determine whether the proposed alternative program will perform at the same level or better than the regional service standard. In making this determination, the Director shall consider the following:

- (1) Estimated participation levels;
- (2) Estimated amounts of waste prevented, recycled, recovered, or disposed;
- (3) Consistency with the waste reduction hierarchy and the source separation priority;
- (4) Economic and technical feasibility; and
- (5) Estimated impact on other waste reduction activities.

(c) If the Director determines that the alternative program will perform at the same level or better than the regional service standard, the Director shall approve the application. The Director may condition the approval on completion of a successful pilot program. If the Director determines that the alternative program will not perform at the same level or better than the regional service standard, the Director shall deny the application. The Director shall decide whether to approve or deny the application within 60 days of the date the Director received the application or, if the Director conditions approval on successful completion of a pilot program, within 60 days of the conclusion of the pilot program. The Director shall provide a copy of the decision to the local government.

(d) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.

(e) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.

(f) The Chief Operating Officer's order regarding an alternative program is a final order and shall not be subject to Metro Code Chapter 2.05, Procedure for Contested Cases. A local government may appeal the order by filing a petition for writ of review.

(g) This section does not prevent a local government from seeking an exception under Section 5.10.140.

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## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1183, FOR THE PURPOSE OF AMENDING METRO CODE TITLE V, SOLID WASTE, TO ADD CHAPTER 5.10, REGIONAL SOLID WASTE MANAGEMENT PLAN, TO IMPLEMENT THE REQUIREMENTS OF THE 2008-2018 REGIONAL SOLID WASTE MANAGEMENT PLAN

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Date: March 13, 2008

Prepared by: Michelle A. Bellia

### BACKGROUND

Ordinance No. 08-1183 (For the Purpose of Amending Metro Code Title V, Solid Waste, to Add Chapter 5.10, Regional Solid Waste Management Plan, to Implement the Requirements of the 2008-2018 Regional Solid Waste Management Plan) implements the Waste Reduction Program requirements contained in the 2008-2018 Regional Solid Waste Management Plan (RSWMP) by amending the Metro Code Title V Solid Waste, to add a new Chapter 5.10. The Metro Council will consider adoption of the updated RSWMP in Ordinance No. 07-1162A (For the Purpose of Adopting the Regional Solid Waste Management Plan, 2008-2018 Update). The staff report related to this ordinance provides the history and purpose of the RSWMP and the Waste Reduction Program. The Metro Council adopted the current version of the RSWMP in Ordinance No. 95-624 (For the Purpose of Adopting the Regional Solid Waste Management Plan) on November 30, 1995, as a functional plan but did not include a companion ordinance to implement the Waste Reduction Program requirements.

The RSWMP is a regional plan that contains binding requirements on local governments of the region as well as policy and program guidance that is not binding. The code language proposed in this ordinance clarifies the requirements of the Waste Reduction Program that are binding on local governments. The RSWMP requirements set forth in the new Metro Code Chapter 5.10 are intended to ensure local governments have a significant amount of flexibility as to how they meet requirements.

The proposed code language also provides a procedure for enforcing those requirements. The intent of the proposed process is to provide an efficient method for local governments to establish compliance with the RSWMP requirements.

### PURPOSE OF THE CODE REVISION

The code language is proposed for the following reasons:

1. The Waste Reduction Program Requirements Must Be Enforceable to Satisfy State Law.

Because Metro sends more than 75,000 tons of solid waste per year to a disposal site (the Columbia Ridge Landfill), ORS Chapter 459 requires Metro to prepare a solid waste reduction program for the region and to submit the Waste Reduction Program to the Oregon Department of Environmental Quality (DEQ) for approval. The DEQ reviews the Waste Reduction Program for compliance with the state law and must approve the Waste Reduction Program if it meets the statutory criteria. Chapter IV of the updated RSWMP contains the components of the Waste Reduction Program.

In reviewing an earlier version of the Waste Reduction Program, DEQ advised that the program “must have specifically enforceable components and must specify how enforcement can be accomplished.” The proposed revisions to the Metro Code identify the enforceable components of the Waste Reduction Program and provide a procedure for enforcing those components.

2. The Code Provisions Notify the Local Governments of the Specific RSWMP Provisions Requiring Compliance.

ORS Chapter 459 provides limits on local governmental authority related to the Waste Reduction Program. Specifically, ORS 459.095(1) prohibits local governments from adopting any ordinance, order, regulation or contract affecting solid waste management that conflicts with a solid waste management plan or program. The RSWMP, which includes the Waste Reduction Program, contains policy guidance as well as enforceable provisions. Once the RSWMP is adopted by the Metro Council and approved by the DEQ, any local government action that conflicts with a requirement of the Waste Reduction Program may be subject to enforcement. Including the enforceable components of the Waste Reduction Program in the Metro Code notifies the local governments of what Metro intends to enforce and allows them to avoid taking conflicting action.

## SUMMARY OF CODE LANGUAGE

Following is a summary of the proposed code provisions:

1. Sections 5.10.010 – 5.10.080 Provide Background Information:

**5.10.010 Definitions:** This section contains definitions specific to Chapter 5.10.

**5.10.020 Authority, Jurisdiction, and Purpose:** This section provides the authority for Metro’s solid waste planning and implementing authority and describes the purpose of the code language.

**5.10.030 Adoption of RSWMP:** This section confirms that the Metro Council has adopted the code language.

**5.10.040 Application of Chapter:** This section provides that Chapter 5.10 applies to areas within Metro’s jurisdiction.

**5.10.050 RSWMP Requirements:** This section distinguishes between requirements of the RSWMP and guidance that is not binding.

**5.10.060 RSWMP Amendments:** This section contains a procedure for amending the RSWMP.

**5.10.070 Severability:** This section provides that sections of Chapter 5.10 and the RSWMP shall be severable and any action invalidating any section of Chapter 5.10 or the RSWMP does not affect the validity of any other section.

**5.10.080 Administrative Procedures and Performance Standards:** This section provides the Chief Operating Officer with authority to establish administrative procedures and performance standards related to Chapter 5.10.

## **2. Sections 5.10.110 – 5.10.180 Provide Compliance Procedures:**

**5.10.110 Conformity to the RSWMP:** ORS Chapter 459 provides the language for this section, which prohibits local governments from taking action related to solid waste that conflicts with the RSWMP requirements implemented by Chapter 5.10.

**5.10.120 Compliance with the RSWMP:** This section addresses local government compliance with the RSWMP requirements and provides notification and reporting procedures for local governments to certify compliance with RSWSP.

This section enables the Director of the Solid Waste and Recycling Department to report to the Chief Operating Officer on local government compliance. If a local government is not in compliance with the RSWMP requirements, the Chief Operating Officer must provide that local government with a copy of the report and recommend action that the local government may take to achieve compliance. A local government that is not in compliance must respond to the report by agreeing with the Director's report recommendations, seeking an extension to comply with the requirement, or seeking an exception from the requirement.

The section includes certain actions the Chief Operating Officer must take upon receipt of the local government's response to the report. If the local government fails or refuses to respond to the report, the Chief Operating Officer may proceed to Council review under Section 5.10.150. A local government may seek Council review under Section 5.10.150 of a report of noncompliance.

**5.10.130 Extension of Compliance Deadline:** The section provides a procedure for local governments to seek an extension from the Director of the time for compliance with the RSWMP requirements. The Director may include terms and conditions in any extension, can only grant two extensions, and cannot extend the compliance deadline more than a year.

This section also allows a local government to seek review by the Chief Operating Officer of the Director's decision under this section. The Chief Operating Officer's determination on the issue is final; a local government cannot seek review by the Metro Council of the decision on an extension.

**5.10.140 Exception from Compliance:** This section provides a procedure for local governments to seek an exception from the Metro Council to a RSWMP requirement. The local government files a request with the Chief Operating Officer who prepares a report recommending to Council whether to grant or deny the request for an exception. The section contains factors for the Chief Operating Officer to analyze related to the exception and provides that the Chief Operating Officer's report may contain terms and conditions related to the exception. The Chief Operating Officer may issue administrative procedures to address consistent application of the factors to consider when deciding whether to recommend granting a request for exception from compliance.

During a public hearing the Council will receive testimony on the Chief Operating Officer's report. The Council's final order on the request may rely on the Chief Operating Officer's report and must address any testimony that opposes the report.

**5.10.150 Review by Metro Council:** This section provides a procedure for local governments to seek review by the Council of the report of noncompliance issued by the Chief Operating Officer under Section 5.10.120. This section further provides a procedure for the Chief Operating Officer to seek review by the Council of a local government action that contravenes the RSWMP requirements, Chapter 5.10, or both.

The Council considers such requests with a public hearing. The Chief Operating Officer prepares a report and recommendation on the matter for the Council to consider. During the public hearing the Council will receive testimony on the Chief Operating Officer's report. The Council's final order on the request may rely on the Chief Operating Officer's report and must address any testimony that opposes the report.

**5.10.160 Penalties for Violations:** This section sets forth the penalties that the Metro Council may include in an order issued under Section 5.10.150.

**5.10.170 Technical Assistance:** This section requires the Chief Operating Officer to encourage local governments to seek technical and financial assistance from Metro.

**3. Sections 5.10.210 – 5.10.240 Contain the Regional Service Standard Requirement:**

**5.10.210 Purpose and Intent:** This section requires local governments to maintain a level of recycling services consistent with the regional service standard or have an approved alternative program. The purpose of the regional service standard is to ensure a certain level of recycling service and to assist the region to meet recovery goals.

**5.10.220 Regional Service Standard:** This section requires local governments to comply with the regional service standard and to provide Metro with compliance information at the Director's request or as required by the administrative procedures.

**5.10.230 Regional Service Standard Elements:** This section identifies the specific elements of the regional service standard, including a Single-Family Residential Standard, Multi-Family Residential Standard, Business Standard, and Education and Outreach Standard.

**5.10.240 Alternative Program:** This section provides the flexibility for local governments to seek a recycling program that is different from the regional service standard but that provides the same or a higher level of recovery.

A local government seeking an alternative program must submit an application to the Director that contains details about the proposed alternative program. The Director then considers the application to determine if the proposed alternative program will perform at the same level or better than the regional service standard. The section contains factors for the Director to consider in making this determination. The Director may approve or deny the application or condition approval on the local government's successful completion of a pilot program. The Chief Operating Officer may issue administrative procedures related to this section to ensure collaboration between Metro and the local government seeking the alternative program.

The local government may seek review by the Chief Operating Officer of the Director's decision under this section. The Chief Operating Officer's determination on the issue is final; a local government cannot seek review by the Metro Council of the decision. A local government may seek an exception to the regional service standard under Section 5.10.140 in addition to or in lieu of the alternative program procedures set forth in this section.

## **ANALYSIS/INFORMATION**

- 1. Known Opposition:** The Public Works Director for the City of Tigard expressed opposition to the Regional Service Standard because it "eliminates local control and the flexibility the City and its haulers require to customize our recycling program based on costs and needs of our customers."

Washington County staff commented that "This ordinance limits local control and the flexibility of the County to design programs and establish collection rates based on the needs of our community."

2. **Legal Antecedents:** Ordinance No. 95-624 (For the Purpose of Adopting the Regional Solid Waste Management Plan), adopted November 30, 1995; Metro Charter; Metro Code Title V Solid Waste; and ORS Chapters 268 and 459.
3. **Anticipated Effects:** Chapter 5.10 clarifies the distinction between the mandatory requirements of the Waste Reduction Program that are binding on local governments and those provisions of the RSWMP that are policy and program guidance. The proposed code language also provides a procedure for enforcing those requirements
4. **Budget Impacts:** No direct budget impacts; however, there may be indirect impacts from efforts to resolve compliance issues.

### **RECOMMENDED ACTION**

Staff recommends that the Metro Council adopt Ordinance No. 08-1183.