

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 03-1019
CODE CHAPTER 5.05 RELATING TO SOLID)
WASTE FLOW CONTROL; AND DECLARING) Introduced by David Bragdon, Metro Council
AN EMERGENCY) President

WHEREAS, the Metro Solid Waste Flow Control Code is set forth in Chapter 5.05 of the Metro Code; and,

WHEREAS, the Metro Solid Waste Flow Control Code requires updating to adequately address current solid waste regulatory issues; and,

WHEREAS, Metro's day-to-day affairs are now managed and directed by the Chief Operating Officer; and,

WHEREAS, it is necessary to amend the Solid Waste Flow Control Code, codified as Metro Code Chapter 5.05, to accomplish these objectives; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.05.010 is amended to read:

5.05.010 Definitions

Notwithstanding anything expressed or implied in the Metro Code to the contrary, as used in this chapter 5.05, the following terms shall have the respective meanings set forth below unless the context requires otherwise:

(a) "Act" shall mean Oregon Revised Statutes Chapter 268, as amended, and other applicable provisions of the laws of the State of Oregon.

(b) "Cleanup Material Contaminated By Hazardous Substances" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(bc) "Council" shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(ed) "Designated facility" means one of the facilities constituting a part of the system designated from time to time pursuant to Section 5.05.030.

(de) "Director" means the Director of the Metro Regional Environmental Management Department or the Director's designee.

(ef) "Disposal site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

(fg) "District" shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(gh) "Metro Code" means the Code of Metro.

(i) “Non-putrescible waste” shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(hj) “Non-system facility” means any solid waste disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste which does not constitute part of the system.

(ik) “Non-system license” means a license issued pursuant to and in accordance with Metro Code Section 5.05.035.

(jl) “Person” shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(km) “Processing facility” shall mean a facility described in Metro Code Section 5.01.010 which has been designated by Metro as constituting part of the system.

(n) “Putrescible” shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(o) “Putrescible waste” shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(p) “Regional Solid Waste Management Plan” means the Metro regional solid waste management plan adopted by Ordinance No. 95-624 on November 30, 1995, and as subsequently amended by the Metro Council.

(mq) “Regional system fee” shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(nr) “Required use order” means a written order issued pursuant to Metro Code Section 5.05.040 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

(os) “Resource recovery facility” shall mean a facility described in Metro Code Section 5.01.010 which has been designated by Metro as constituting part of the system.

(pt) “Solid waste” shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(qu) “Source separated recyclable material” shall have the meaning assigned thereto in ORS 459.005 Metro Code Section 5.01.010.

(v) “Special waste” shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(rw) “State” shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(sx) “System” shall mean any and all facilities now or hereafter designated by Metro as part of its system for the management and disposal of solid and liquid waste, including, but not limited to recycling and other volume reduction facilities, sanitary landfills, or other disposal means, resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel), recycling and transfer stations, roads, water lines, wastewater lines and treatment facilities to the extent provided or operated to carry out the provisions of the Act, and all buildings, fixtures, equipment and all property, real and personal now or hereafter owned, leased, operated or used by Metro, all for the

purpose of providing for solid and liquid waste disposal; said system consists of the designated facilities described in Section 5.05.030(a) of this chapter.

(ty) “Transfer station” shall mean a facility described in Metro Code Section 5.01.010 which has been designated by Metro as constituting part of the system.

(uz) “Waste hauler” means any person engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated within Metro, including any person engaged in such activities with respect to solid waste generated by such person as well as any person engaged in such activities with respect to solid waste generated by others.

SECTION 2. Metro Code Section 5.05.020 is amended to read:

5.05.020. Authority, Jurisdiction, and Application

(a) Metro’s Solid Waste flow control authority is established under ORS Chapter 268 for Solid Waste and the Metro Charter and includes authority to regulate Solid Waste generated within Metro.

(b) This chapter shall govern the transportation, transfer, disposal and other processing of all solid waste generated within Metro as authorized by state law, and shall govern all waste haulers and other persons who generate solid waste within Metro or who transport, transfer, dispose or otherwise deal with or process solid waste generated within Metro; provided that notwithstanding the foregoing, this chapter does not apply to or govern the transportation, transfer or processing of, or other dealing with, non-putrescible source separated recyclable materials that are reused or recycled, or are transferred, transported or delivered to a person or facility that will reuse or recycle them.

(c) All Solid Waste regulation shall be subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. The provisions of this chapter shall be liberally construed to accomplish these purposes.

SECTION 3. Metro Code Section 5.05.030 is amended to read:

5.05.030 Designated Facilities of the System

(a) Designated Facilities. The following described facilities constitute the designated facilities of the system, the Metro Council having found that said facilities meet the criteria set forth in Metro Code Section 5.05.030(b):

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (3) Facilities Subject to Metro Regulatory Authority. All disposal sites and solid waste facilities within Metro which are subject to Metro regulatory authority under Chapter 5.01 of the Metro Code.

- (4) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of an agreement between Metro and the owner of Lakeside Reclamation authorizing receipt of solid waste generated within Metro.
- (5) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of an agreement between Metro and the owner of Hillsboro Landfill authorizing receipt of solid waste generated within Metro.
- (6) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc. In addition, Columbia Ridge Landfill may accept special waste generated within Metro:
 - (A) As specified in an agreement entered into between Metro and Oregon Waste Systems authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.
- (7) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, located in Klickitat County, Washington. Roosevelt Regional Landfill may accept special waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.
- (8) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill, located in Morrow County, Oregon. Finley Buttes Regional Landfill may accept special waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.
- (9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within the District only as follows:
 - (A) As specified in an agreement entered into between Metro and the owner of the Coffin Butte Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility special wastes not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and a designated facility for Non-putrescible waste. An agreement, or amendment to an agreement, between Metro and a designated facility for Putrescible waste, shall be subject to approval by the Metro Council prior to execution by the Chief Operating Officer.

(d) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

SECTION 4. Metro Code Section 5.05.035 is amended to read:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-

duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license; and
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed.
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

(b) Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is

denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility shall be one hundred dollars (\$100).

- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Determination Whether to Issue Non-System License. Within 60 days after receipt of a completed application for a non-system license for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste, and-including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. After receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue the non-system license. If the Chief Operating Officer recommends that the non-system license be granted, the Chief Operating Officer shall recommend to the Council specific conditions of the non-system license. Within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required in connection therewith, the Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination. In making such determination, the Chief Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to such determination:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;

- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations.
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a non-system license as the Chief Operating Officer determines are deemed necessary or appropriate under the circumstances.

(d) Issuance of Non-System License; Contents. ~~In the event the Chief Operating Officer determines to issue a non-system license, then such non-system license shall be issued by the Chief Operating Officer.~~ Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than 120 days from the date of issuance for limited-duration non-system licenses, and two years from the date of issuance for all other non-system licenses; and
- (6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in Section 5.05.035(c).

(e) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month;

- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(f) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

SECTION 5. This ordinance is immediately necessary for the health, safety and welfare of the Metro region in order to ensure the efficient operation of the region's solid waste management system. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council on 9th day of October, 2003.



[Signature]
 David Bragdon, Council President

Attest:
[Signature]
 Christina Billington, Recording Secretary

Approved as to Form:
[Signature]
 Daniel B. Cooper, Metro Attorney

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 03-1019 REGARDING SOLID WASTE FACILITY REGULATION; AND DECLARING AN EMERGENCY*

Date: August 11, 2003

Prepared by Bill Metzler and Janet Matthews

BACKGROUND

As the region's solid waste system has grown in size and complexity over the past ten years, Metro's regulatory and enforcement capabilities have evolved in response – ensuring that existing and proposed private solid waste facilities and transporters comply with Metro Code, administrative procedures, and performance standards.

There are currently forty Metro regulated facilities and haulers operating in and out of the region; approximately twelve new applications for operating authorization are, or soon will be, in the pipeline. Decisions on license and franchise renewals will have to be made this year, and several of these have important implications for the solid waste system.

Most operating authorization decisions that continue to come before the Metro Council, however, are not about policy-setting or system impacts. These are administrative in nature, and are more appropriately administered by the Chief Operating Officer (COO). In addition, several regulatory decisions currently reserved for the COO are policy-related, have system impacts, and more appropriately belong in the jurisdiction of the Council.

Current operating authorization responsibilities in Code were developed during the era when the Executive Officer (EO) was an independently-elected official, not responsible to the Council. During this time, the agency staff worked for the EO, and the only way for the Council to influence regulatory decisions such as operating authorizations was by mandating in the Code that such decisions were reserved for the Council. Since January 2003, however, there has been a new institutional arrangement. Agency staff now work for the Council through a COO, who is responsible to the Council, and can be assumed to be more responsive to Council direction than under the previous structure. It is, therefore, now appropriate to update Chapters 5.01 and 5.05 of the Code, to reflect a new division of responsibilities.

The proposed code amendments are intended to:

1. reserve policy-related operating authorization decisions for Council;
2. delegate non-policy operating authorization decisions to the COO;
3. produce efficiencies for agency legislative and administrative review; and
4. continue to protect public health and safety.

In order to accomplish these objectives, a decision factors framework has been developed for consideration by the Council and COO.

* This staff report is identical in all but title for Ordinances No. 03-1018, 03-1019 and 03-1020 to amend Metro Code Chapters 5.01, 5.05 and 7.01, respectively.

Decision Factors Framework

The proposed amendments are intended to streamline the decision-making process for operating authorization through Metro Code Chapter 5.01 (facilities inside the region) and Chapter 5.05 (waste taken outside the region.) Under this proposal, issuing a license would become an administrative action, while issuing a franchise would continue to be subject to Council action.

Council. A legislative review and decision process would continue to be employed when any facility processing putrescible (i.e., “wet”) waste seeks authority to operate by applying for a franchise. Wet waste involves policy decisions regarding market entry due to the potential for impacts on the solid waste system (e.g., contracts, rates, public investment.) It is proposed that the following factors be considered for Council operating authorization decisions:

- ❑ Whether all standards have been met, including local land use approval.
- ❑ Potential impact on major Metro contracts (transfer, transportation and disposal.)
- ❑ Potential impact on existing infrastructure, rates or operating efficiency of Metro facilities.

Examples: local transfer stations, regional transfer stations, landfills, hauling or disposing of wet waste outside the region, and food waste composting and reloading facilities.

Chief Operating Officer. A COO review and decision process is proposed for facilities processing yard debris or non-putrescible (i.e., “dry”) waste. Under current Code, dry waste and yard debris have a lower barrier to market entry due to their lower risk for potential impact on the solid waste system. Therefore, operating authorization should be an administrative decision. It is proposed that the following factors be considered for COO operating authorization decisions:

- ❑ Whether local land use approval has been granted, and DEQ permits have been obtained.
- ❑ Whether entry standards can be met (e.g., can applicant operate safely and responsibly, ability to pay fees and taxes, obtain financial assurance, liability insurance.)
- ❑ Whether standards or conditions specific to an activity or facility can be met (e.g., effective odor minimization plan, appropriate operating plan, meet material recovery requirements.)

Examples: reload facilities, material recovery facilities, yard debris composting facilities, and hauling or disposing of dry waste outside the region.

In summary, the Council would continue to have authority over policy-related operating authorization decisions that include franchise applications and wet waste Designated Facility Agreements (DFAs.) In addition, the Council would assume authority over wet waste Non-System Licenses (NSLs) – which are currently an administrative action. The responsibility for approving or denying licenses would shift from the Council to the COO. Dry waste DFA’s would be a joint decision with Council deciding to list a facility and the COO negotiating/executing the agreement. This would help accomplish the intended goals for producing efficiencies for both legislative and administrative functions in the agency, improve the efficiency of the solid waste authorization process, and continue to protect public health and safety.

For a more detailed comparison of the current Code and proposed changes to solid waste operating authorizations, see Table 1 on the next page.

Table 1 - Solid Waste Operating Authorizations: Existing and Proposed Framework

Existing

	Certificate	License	Franchise	Non-System License ¹	Designated Facility Agreement
<i>COO Action</i>					
(1) Processing petroleum contaminated soil	X				
(2) Material recovery <10% residual	X				
(3) Hauling <u>dry</u> waste <i>outside the region</i> .				X	
(4) Hauling <u>wet</u> waste <i>outside the region</i> .				X	
<i>Council Action</i>					
(5) Reload (solid waste, yard debris, soil, food)		X			
(6) Yard debris composting		X			
(7) Food waste composting			X		
(8) Material recovery >10% residual		X			
(9) Local Transfer Station ²		X	X		
(10) Regional Transfer Station			X		
(11) Landfill or energy recovery (in-region)			X		
(12) A facility <i>located outside region</i> that takes <u>dry</u> or special waste from the region					X
(13) A facility <i>outside the region</i> accepting <u>wet</u> waste from the region.					X

¹ Hauling to a facility without a Designated Facility Agreement with Metro.

² A Local Transfer Station is franchised only if direct hauling putrescible waste to Columbia Ridge, otherwise Licensed.

Proposed

	License ³	Franchise	Non-System License	Designated Facility Agreement
<i>COO Action</i>				
(1) Processing petroleum contaminated soil	X			
(2) (8) Material recovery	X			
(3) Hauling <u>dry</u> waste <i>outside the region</i>			X	
(5) Reload (solid waste, yard debris, soil)	X			
(6) Yard Debris Composting	X			
(12) A facility <i>located outside region</i> that takes <u>dry</u> or special waste from the region				X
<i>Council Action</i>				
(4) Hauling <u>wet</u> waste <i>outside the region</i> .			X	
(7) Putrescible waste processing (e.g., food waste composting)		X		
(9) Local Transfer Station		X		
(10) Regional Transfer Station		X		
(11) Landfill or energy recovery (in-region)		X		
(13) A facility <i>outside the region</i> accepting <u>wet</u> waste from the region.				X

³ The proposal combines Certificates with Licenses and eliminates the Certificate as a regulatory category.

Overview of Changes to Metro Code Chapters 5.01, 5.05 and 7.01

Key amendments are outlined below. The first section addresses Chapter 5.01, the second addresses Chapter 5.05 and the third discusses Chapter 7.01.

Ordinance No. 03-1018 Amending Metro Code Chapter 5.01 – Solid Waste Facilities Inside the Metro Region

1. Adds COO Authority

- Allows new facility license applications and existing facility license renewals to be reviewed and approved through an administrative action by the COO (Section 5.01.067(a)).

Purpose: Streamlines the decision-making process and increases efficiency through an administrative review and approval process for license applications and renewals. This gives the COO authority to approve or deny licenses based on whether the application meets the requirements of the Metro Code Section 5.01.060, 5.01.067, and 5.01.087 (i.e., the same criteria that the COO currently uses to recommend to Council whether to grant or deny a license application or renewal.) This would free the Council to focus on critical policy issues and system decisions.

2. Eliminates Certificates as a Regulatory Category

- Certificates are eliminated as a regulatory category (primarily Sections 5.01.045 and 5.01.065.)

Purpose: Consolidates similar regulatory categories, makes certificates a licensable activity. Currently, the COO may approve or deny an application for a certificate through an administrative process. Since the proposed Code amendments would now provide the COO with the authority to approve or deny licenses through an administrative process, there is no longer any need for the certificate category. Currently there are two types of facilities that must get a Metro certificate to operate: (1) facilities that process non-putrescible waste with less than ten percent processing residual, and (2) petroleum contaminated soil processors. These amendments would make both of those activities licensable.

3. Simplifies Material Recovery Facility Classifications

- There are currently two separate categories of material recovery facilities (i.e., facilities that recover non-putrescible waste.) As noted in #2 above, a certificate is required with less than ten percent processing residual and a license is required with more than ten percent processing residual. Because the certificate is eliminated as a regulatory category, both activities would be merged into a single category that requires a license (Section 5.01.045(a)(1)).

Purpose: Simplifies regulation for material recovery facilities. Currently, a certificate is required for the activity of processing non-putrescible waste if the processing results in residual of less than ten percent. However, a license is required for processing non-putrescible waste if the processing results in residual of more than ten percent. The proposed Code amendment removes the distinction for processing residual, eliminates the certificate requirement, and maintains the license requirement for processing non-putrescible waste.

4. Clarifies Which Activities Require a Franchise

- ❑ Local Transfer Stations. A franchise would be required to operate a Local Transfer Station (currently a licensable activity, but all existing Local Transfer Stations have franchises because they all have “direct haul” authority, which requires a franchise - Section 5.01.045(b)(2)).

Purpose: Ensures Council review and approval of all transfer stations (Local Transfer Stations and Regional Transfer Stations) - consistent with the decision factors for streamlining the regulatory review process.

- ❑ Putrescible Waste Processing (e.g., food waste composting.) Specifies that a franchise would be required to operate a putrescible waste processing facility. This would include food waste composting (Section 5.01.045(b)(1)).

Purpose: Identifies that processing of putrescible waste (other than yard debris) would be a franchised activity, clearly distinct from yard debris composting, which is a licensable activity.

5. Clarifies Exempt Facilities.

- ❑ Clarify the exemptions for specified activities (Section 5.01.040).

Purpose: To ensure consistency with existing Code provisions in Section 5.01.135(d) that allows Metro to inspect an exempt operation to verify that it is conducted in a manner that qualifies it as exempt.

- ❑ Clarify what types of non-putrescible source-separated recyclable materials are exempt from regulation: 5.01.040(a)(3).

Purpose: Currently, facilities that exclusively receive non-putrescible source-separated recyclable materials are exempt from obtaining Metro operating authorization. The proposed amendment would clarify that the exemption applies to operations that receive and reuse or recycle the source-separated recyclable material. This ensures that the regulatory exemption for traditional source-separated recyclable materials is not unintentionally extended to other waste streams that could be received for a tip fee, and then stockpiled indefinitely creating a health and safety hazard (e.g., drywall, tires, carpet, roofing.)

6. Adds Flexibility to Application Review

- ❑ Improves the flexibility of the application review period for licenses and franchises (Sections 5.01.060, 5.01.067 and 5.01.070.)

Purpose: The amendments would permit: (1) the license and franchise review period to be extended by mutual agreement of the applicant and the COO; (2) license and franchise applicants to withdraw an application at any time prior to a decision and to resubmit a new application at any time thereafter; (3) the application review period to be restarted if the applicant substantially modifies its application after submission; and (4) the Council to extend their review period for franchises for up to 60 days.

7. Adds Flexibility to Duration of Licenses and Franchises.

- ❑ Permits licenses and franchises to be issued for periods of less than five years (current Code permits only five-year terms.)

Purpose: There may be a few instances where it is in the public interest to issue a license or franchise for a period less than five years, based on operator experience, nature of materials, markets and proposed operations.

8. Clarifies Cost as a Factor in Franchise Applications.

- Makes clear that a Franchise application must include consideration of the likely effect of the proposed operation on the cost of solid waste disposal and recycling services for the citizens of the region - Section 5.01.060(d). In addition, this amendment identifies such costs as a factor for Council in determining issuance of a Franchise – Section 5.01.070(f).

Purpose: These provisions would replace the outdated “System Cost” analysis that is only required for direct haul (revised Sections 5.01.045(b)(4) and 5.01.060(e)). The replacement text makes clear that Council will still consider cost as a factor in making decisions about Franchises.

Ordinance No. 03-1019 Amending Metro Code Chapter 5.05 – Solid Waste Leaving the Metro Region

1. Clarifies Source-Separated Recyclable Material Exemption.

- The existing regulatory exemption for “source-separated recyclable material” is amended to read “non-putrescible source-separated recyclable materials that are reused or recycled or are transferred, transported or delivered to a person or facility that will reuse or recycle them” consistent with the amended exemptions in Chapter 5.01.

Purpose: The exemption for source-separated recyclable material is updated so that the exemption is not unintentionally extended to “food waste”, which is putrescible and may pose health and safety issues if not handled and processed appropriately. The current exemption was written at a time when food waste recovery was not contemplated and source-separated recyclable materials consisted of items such as paper, cardboard, metal and glass – all non-putrescible with existing markets and proven processing technologies.

2. Defines Who Authorizes Designated Facilities.

- Maintains Council authority to list all designated facilities in the Metro Code, and to approve or deny designated facility agreements for facilities that accept *putrescible* waste.
- Establishes new authority for the Chief Operating Officer to approve or deny designated facility agreements for facilities that accept *non-putrescible* waste, special waste, and cleanup material contaminated by hazardous substances. Dry waste DFA’s would be a joint decision with Council deciding to list a facility and the COO negotiating/executing the agreement.

Purpose: Provides consistency with the decision factors framework that determines administrative or legislative action. Ensures that Council is involved in matters where there is a policy decision due to the potential for impacts on the solid waste system by an individual facility.

3. Defines Who Authorizes Non-System Licenses.

- Establishes authority for the Council to approve or deny non-system licenses for *putrescible* waste (currently all Non-System Licenses are approved by the COO.)

- Maintains authority of the Chief Operating Officer to approve or deny non-system licenses for *non-putrescible* waste.

Purpose: Provides consistency with the decision factors framework that determines administrative or legislative action. Ensures that Council is involved in matters where there is a policy decision due to the potential for impacts on the solid waste system.

Ordinance No. 03-1020 Amending Metro Code Chapter 7.01 – Excise Taxes

- Metro Code Chapter 7.01 is amended to delete references to Certificates in several locations. This is consistent with the proposed amendments to Chapter 5.01 that would consolidate Certificates and Licenses and delete the Certificate as a regulatory category. Other technical changes to the list of facilities exempt from paying excise taxes are also made, to ensure that the exemptions provided in Chapter 7.01 are the same as the exemptions from regional system fees provided in Chapter 5.01.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

Current provisions of Metro Code Chapters 5.01, 5.05, and 7.01.

3. Anticipated Effects

Adoption of Ordinance Nos. 03-1018, 03-1019, and 03-1020 would revise Chapters 5.01, 5.05 and 7.01 of the Metro Code to accomplish the following: 1) help produce efficiencies for both legislative and administrative functions in the agency, 2) ensure that all policy related operating authorization decisions are in the Council's hands, 3) delegate non-policy operating authorization decisions to the COO, 4) continue to protect public health and safety. Ordinance Nos. 03-1018 and 03-1019, amending Chapters 5.01 and 5.05 of the Metro Code are necessary for the immediate preservation of public health, safety and welfare by providing for more effective and comprehensive management and regulation of the regional solid waste system through timely implementation of operating authorizations. An emergency is therefore declared to exist, and these two ordinances shall take effect immediately, pursuant to Metro Charter section 39(1). Ordinance No. 03-1020, amending Chapter 7.01 of the Metro Code, does not include an emergency clause because of the Metro Charter prohibition on emergency clauses on ordinances related to the imposition of a tax.

4. Budget Impacts

There may be savings as a result of fewer operating authorizations going through the legislative process.

RECOMMENDATION

The Council President recommends adoption of Ordinances No. 03-1018, 03-1019 and 03-1020.