

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 13-1306
CODE CHAPTER 5.01 REGARDING SOLID)	
WASTE TRANSFER STATIONS)	Introduced by Martha J. Bennett, Chief
)	Operating Officer, with the concurrence of Tom
)	Hughes, Council President
)	

WHEREAS, Metro Code Chapter 5.01 establishes Metro’s Solid Waste Facility Regulations; and

WHEREAS, the Chief Operating Officer has proposed amendments to Chapter 5.01 that further the goals of the Solid Waste Roadmap; and

WHEREAS, the proposed amendments remove the distinction between local and regional privately-owned transfer stations and allow transfer stations to accept regulated hazardous waste for storage if certain conditions are met; and


WHEREAS, the Chief Operating Officer has proposed a moratorium on applications for new transfer stations until January 1, 2016 to maintain continuity in the system pending completion of the Solid Waste Roadmap project regarding the future of the region’s transfer system; and

WHEREAS, the Metro Council finds that proposed changes to Metro Code Chapter 5.01 furthers the goals of the Solid Waste Roadmap; now therefore,

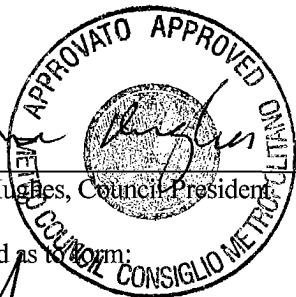
THE METRO COUNCIL ORDAINS AS FOLLOWS:

- Section 1. Metro Code Amendment. Metro Code subsections 5.01.010(x) (“Local Transfer Station”) and 5.01.010(nn) (“Regional Transfer Station”) are repealed, and the remaining subsections of Metro Code Section 5.01.010 are renumbered accordingly; and all other subsections of Metro Code Section 5.01.010 shall remain unchanged.
- Section 2. Metro Code Amendment. Metro Code Section 5.01.070 is amended in the form attached hereto as Exhibit “A.”
- Section 3. Metro Code Amendment. Metro Code Section 5.01.125 is amended in the form attached hereto as Exhibit “B.”


ADOPTED by the Metro Council this 1st day of August, 2013.



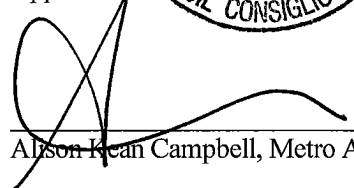
 Tom Hughes, Council President


 Approved as to form:

Attest:



 Kelsey Newell, Recorder



 Alison Kean Campbell, Metro Attorney

Exhibit "A" to Ordinance 13-1306

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.01 SOLID WASTE FACILITY REGULATION

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES & FRANCHISES

5.01.070 Issuance of Franchise

(a) Applications for Franchises filed in accordance with Section 5.01.060 shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(b) The Chief Operating Officer shall make such investigation concerning the application as the Chief Operating Officer deems appropriate, including the right of entry onto the applicant's proposed Franchise site.

(c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed Franchise complies with the Regional Solid Waste Management Plan, whether the proposed Franchise meets the requirements of Section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(d) The Chief Operating Officer shall provide the recommendations required by subsection (c) of this section to the Council, together with the Chief Operating Officer's recommendation regarding whether the application should be granted or denied. If the Chief Operating Officer recommends that the application be granted, the Chief Operating Officer shall recommend to the Council specific conditions of the Franchise.

(e) Subsequent to receiving the recommendation of the Chief Operating Officer, the Council shall issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, such order shall be effective immediately.

(f) In determining whether to authorize the issuance of a Franchise, the Council shall consider, but not be limited by, the following factors:

- (1) Whether the applicant has demonstrated that the proposed Solid Waste Facility and authorized Activities will be consistent with the Regional Solid Waste Management Plan;

- (2) The effect that granting a Franchise to the applicant will have on the cost of solid waste disposal and recycling services for the citizens of the region;
- (3) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents;
- (4) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood;
- (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise.

(g) The Council shall act to grant or deny a Franchise application within 120 days after the filing of a complete application. The deadline for the Council to act to grant or deny an application may be extended as provided in this section. If the Council does not act to grant or deny an application by the deadline for such action, the Franchise shall be deemed granted for the Solid Waste Facility or Disposal Site requested in the application, and the Chief Operating Officer shall issue a Franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.

(h) At any time after the filing of a complete Franchise application the deadline for the Council to act to grant or deny the application shall be extended if:

- (1) The Council acts to extend the deadline for up to an additional 60 days, which the Council may do one time for any single application;
- (2) The applicant substantially modifies the application during the course of the review, in which case the 120 days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or

(3) The applicant and the Chief Operating Officer agree to extend the deadline for the Council to act for a specified period of time.

(i) An applicant may withdraw its application at any time prior to the Council's decision and may submit a new application at any time thereafter.

(j) If a request for a Franchise is denied, no new application for this same or substantially similar Franchise shall be filed by the applicant for at least six (6) months from the date of denial.

(k) The term of a new or renewed Franchise shall be not more than five (5) years.

(l) Notwithstanding any other provision in this section, Metro shall not accept an application for a new Franchise for authority to operate a Transfer Station until January 1, 2016.~~no application for authority to operate a Transfer Station that was received after August 19, 2004, shall be granted during the period commencing August 19, 2004, and continuing until December 31, 2007.~~

(Ordinance No. 81-111, Sec. 8. Amended by Ordinance No. 82-136, Sec. 3; Ordinance No. 98-762C, Sec. 18; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.9; Ordinance No. 04-1056, Sec. 2; and Ordinance No. 05-1093, Sec. 2.)

Exhibit "B" to Ordinance 13-1306

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.01 SOLID WASTE FACILITY REGULATION

5.01.125 Obligations and Limits for Selected Types of Activities

(a) A holder of a License or Franchise for a Material Recovery facility or Transfer Station ~~issued after July 1, 2000~~, shall perform Material Recovery from Non-Putrescible Waste accepted at the facility as specified in this section or as otherwise specified in its license or franchise, or shall deliver such Non-Putrescible Waste to a Solid Waste facility authorized by Metro to recover useful materials from Solid Waste.

(b) A licensee or franchisee subject to subsection (a) of this section shall recover at least 25 percent by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste shall exclude both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section shall constitute a violation enforceable under Metro Code Sections 5.01.180 and 5.01.200. After December 31, 2008, the requirements of this subsection will not be applicable to licensees or franchisees unless Metro Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.125(c).

(c) Effective January 1, 2009, a licensee or franchisee subject to subsection (a) of this section shall:

- (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. Processing residual from such a facility shall not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight (8) inches in size in any dimension.
- (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of such sampling to

Metro in the monthly report due the month following the end of that quarter.

(3) Based on observation, audits, inspections and reports, Metro inspectors shall conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.135(c). Failure to maintain the recovery level specified in subsection (c)(1) of this section shall constitute a violation enforceable under Metro Code. The first two violations of this subsection by a single licensee or franchisee shall not result in the imposition of a civil penalty.

(4) Failure to meet the reporting requirements in subsection (c)(2) of this section shall constitute a violation enforceable under Metro Code. ~~—after June 30, 2009.~~

(d) A holder of a Franchise for a ~~Local~~ Transfer Station:

(1) Shall accept Putrescible Waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul Putrescible Waste.

(2) Shall not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.

(3) Shall be limited in accepting Putrescible Waste during any ~~fiscal~~ year to an amount of Putrescible Waste as established by the Metro Council in approving the ~~Local~~ Transfer Station Franchise application.

~~_(4) The Chief Operating Officer may authorize an increase in a tonnage authorization established pursuant to subsection 5.01.125(d)(3) of this chapter upon the Chief Operating Officer's finding that growth or other conditions affecting demand for disposal of Putrescible Waste cannot be served by said tonnage authorization. Any such increase in tonnage authorized pursuant to this subsection shall be limited to a maximum of five percent (5%) of any tonnage authorization or disposal limit approved by the Council, and shall be valid for a period not exceeding 24 months.~~

~~—(c) A holder of a Franchise for a Regional Transfer Station, in accordance with its franchise:~~

~~(1) Shall accept authorized Solid Waste originating within the Metro boundary from any person who delivers authorized waste to the facility, on the days and at the times established by Metro in approving the Franchise application.~~

~~(2) Shall provide an area for collecting Household Hazardous Waste from residential generators at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the Franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.~~

~~(4)(3) Shall provide an area for collecting source-separated recyclable materials without charge at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.~~

~~(e)(f)~~ A holder of a license for a reload facility shall deliver all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.

~~(f)(g)~~ A holder of a license or franchise for a solid waste facility shall not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such size reduction is described and approved by Metro in an operating plan.

(Ordinance No. 98-762C, Secs. 30-31. Amended by Ordinance No. 00-866, Sec. 5; Ordinance No. 01-916C, Sec. 4; Ordinance No. 02-952A, Sec. 1; Ordinance No. 03-1018A, Sec. 16; Ordinance No. 07-1147B, Sec. 3; and Ordinance No. 12-1272, Sec. 3.)

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 13-1306 AMENDING CODE CHAPTER 5.01 REGARDING SOLID WASTE TRANSFER STATIONS

July 16, 2013

Prepared by: Roy Brower
503-797-1657

Proposed Ordinance No. 13-1306 amends Metro's solid waste facility regulatory code (Metro Code Chapter 5.01) to clarify the obligations of privately-owned transfer stations and eliminate the distinction between "regional" and "local" facilities. The proposed ordinance also establishes a temporary moratorium on new transfer station applications and specifies the conditions under which a transfer station may accept regulated hazardous waste. These proposed code changes support the extension of privately-owned transfer station franchises until the end of 2015, which are also being considered by Council under separate ordinances.¹ In total, these proposals are intended to: 1) provide interim clarity for the region's solid waste system; 2) allow for general market continuity; and 3) create minimal disruption while the future course for the solid waste system is being considered.

BACKGROUND

Metro's major solid waste contracts (operations², transport and disposal) will expire at the end of 2019. In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken an effort to plan for the future of the regional solid waste system known as the Solid Waste Roadmap. A major component of this effort is to take a broad look at the role, configuration and services offered by transfer stations in the system, including those owned by Metro (South and Central) and by private companies (Waste Management, Republic Services and Pride Disposal). This project is known as the Transfer Station Configuration Project (SW Roadmap Project #5).

This proposed ordinance, in conjunction with the term extensions for the franchises, is intended to create clear ground rules to maintain clarity, market continuity, and minimize system disruption over an interim two-year period. Together these ordinances largely maintain the status quo which will allow decision makers and stakeholders to focus their efforts on developing and evaluating long-term public goals and outcomes for the region's solid waste system.

Following is summary of the changes this legislation would accomplish. Adoption of this ordinance would result in the following changes to Metro Code Chapter 5.01:

1. Regional versus Local Transfer Stations

The putrescible (wet) waste disposal system currently consists of two classes of transfer facilities under Metro Code: 1) large-scale **regional** transfer stations, of which there is one privately-owned facility³ and two Metro-owned facilities⁴; and 2) limited-scale **local** transfer stations, of which there are three

¹ Willamette Resources, Inc. (Ord. No. 13-1307), Pride Recycling Company (Ord. No. 13-1308), Troutdale Transfer Station (Ord. No. 13-1309), and Forest Grove Transfer Station (Ord. No. 13-1310).

² Metro's transfer station operations contracts expire in March 2017 but can be extended until the end of 2019.

³ Forest Grove Transfer Station

⁴ Metro Central and Metro South

privately-owned facilities⁵. All privately-owned transfer stations located within the region are authorized and regulated by Metro through franchises that are approved by the Council. In general, Metro restricts the scale of operation and the number of activities allowed at local transfer stations and relaxes such restrictions for regional transfer stations.

One purpose of the proposed change to Chapter 5.01 is to eliminate the distinction between regional and local facilities. In reality, there is currently little practical difference among the current privately-owned transfer stations. Elimination of this distinction and clarification of standards allows the future policy discussion to be more directly focused on public and private roles and services at transfer stations.

Staff also recommends extending the term of the current franchises for two years. The current transfer stations franchises, which were approved by Council in 2008, are all set to expire at the end of 2013. Staff recommends that the term of the current franchises be extended until the end of 2015 in order to largely maintain the status quo of the system during this interim evaluation period. These proposed term extensions for the franchises will be considered by Council under separate ordinances.

In addition to eliminating the regional and local distinctions between transfer stations, adoption of this proposal will also establish a standard set of transfer station obligations in Code, eliminate administratively-issued tonnage increases without prior Council approval, and result in establishing a franchise tonnage limit on the Forest Grove Transfer Station.⁶ These Code changes will help ensure market continuity and minimize disruption by providing a clear, standard set of conditions for all transfer stations. Current conditions, roles and responsibilities of the privately-owned transfer stations will remain the same for the extension period thus improving clarity for the next two years. This will also allow future analysis to focus on the long term roles, services and configuration of the regional solid waste system and to what extent these roles can or should be satisfied by the public or private sector.

Table 1 provides a comparison of the size, scope, service level and operations of all transfer stations. The publicly-owned Metro transfer stations offer a full suite of public services, longer hours and more days of operation than do any of the privately-owned stations. The private transfer stations offer more limited services and hours of operation some of which may be specified in the Metro-issued franchises. Table 1 also provides a comparison of tonnage flowing through each facility, and number of customers using the facilities. The proposed changes to the transfer station designations, along with the term extensions, are intended to provide more clarity, continuity and minimize system disruption over the next two years while Metro evaluates the long-term roles of public and private operations.

⁵ Pride Recycling Company, Troutdale Transfer Station, and Willamette Resources, Inc.

⁶ See Ordinance No. 13-1310 for a fuller discussion of the Forest Grove proposed tonnage cap.

Table 1
**Transfer Station Comparison of
Operations, Tonnage, Services and Fees**

	Metro Central	Metro South	Forest Grove	Troutdale	Pride	WRI
Days open per year ⁷	362	362	306	260	260	260
On-site material recovery	Yes	Yes	No ⁸	No ⁹	Yes	Yes
Self haul service - business (#Loads/year 2012)	Yes	Yes (129,000)	Yes (1,100)	Yes	Yes	Yes
Self haul service – residential ¹⁰	Yes	Yes	Yes	No	No	No
Self haul proxy customers ¹¹ (#Loads/year in 2012)	71,000	129,000	1,100	NA	NA	NA
Permanent HHW facility	Yes	Yes	No ¹²	Metro does not allow ¹³		
Food waste accepted	Yes	Yes	No	Yes	Yes	Yes
Waste Tons Delivered (Total in 2012) ¹⁴	272,000	240,000	108,000	88,000	88,000	111,000
Tonnage Cap 2013 (Wet Waste)	None	None	None	70,000	70,000	70,000
Posted Tip Fee (as of 9/1/12)	\$93.84	\$93.84	\$95	\$92.95	\$92.83	\$93.84
Transaction Fee	\$3	\$3	\$10	0	0	\$3
Enhancement Fee	\$.50/ton	\$.50/ton	\$.50/ton	0	0	0

2. Temporary Moratorium

This proposed ordinance would prohibit Metro from accepting an application seeking a new franchise to operate a transfer stations until January 1, 2016. This would place a moratorium on new transfer capacity for this interim two-year period. This short-term moratorium helps to maintain the current market and system in place for at least two years and allows Metro to focus on the future of the system.

To staff's knowledge, the only potential applicant considering future transfer station operations is Oregon Recycling Systems (Columbia Development Enterprises), a company comprised of independent local haulers. However, the applicant is not actively pursuing such authority at this time and has indicated that it is not likely to seek a franchise for two to five years.

3. Tonnage adjustment

⁷ Under Code, Metro may set days and hours of operation at private transfer stations but has chosen not to do so.

⁸ Forest Grove Transfer Station directs recoverable non-putrescible waste loads to a Metro-authorized material recovery facility in Hillsboro (Tualatin Valley Waste Recovery - TVWR), owned by Waste Management.

⁹ Troutdale Transfer Station reloads recoverable non-putrescible waste loads to TVWR.

¹⁰ Metro restricts residential self-haul to non-putrescible waste at local transfer stations.

¹¹ These are loads paid by cash and, therefore, assumed to be self haul customers. Commercial haulers tend to establish an account.

¹² Metro has not authorized a permanent Household Hazardous Waste (HHW) facility at Forest Grove but requires they host Metro sponsored collection events at least twice a year.

¹³ Metro does not authorize permanent HHW facilities at private local transfer stations.

¹⁴ Includes wastes that do not count against the tonnage cap e.g. out-of-district waste and non-putrescible waste.

This proposed ordinance eliminates administratively-issued tonnage increases without prior Council approval as currently allowed in Metro Code.¹⁵ The Chief Operating Officer has granted tonnage increases under this Code provision on two occasions within the last five-years. By eliminating this provision in the Code, all franchise tonnage increases must be approved by Council. As part of this change, staff also recommends that the Council only consider such requests that can demonstrate an explicit public benefit for granting the tonnage increases (e.g., tip fee reduction, more efficient routing, etc.).

4. Hazardous Waste Acceptance

Under the current Code, solid waste transfer stations are not allowed to *intentionally* accept regulated hazardous waste. Solid waste facilities must separate and properly manage any hazardous waste that is inadvertently received.

Troutdale Transfer Station has indicated an interest in operating as a limited transfer facility for regulated hazardous waste. Metro does not regulate hazardous waste; however, the acceptance of such waste at transfer stations is currently prohibited under Code. The Oregon Department of Environmental Quality (DEQ) regulates the acceptance, transfer, and disposal of hazardous waste within the region. Such hazardous waste authority is delegated to the DEQ by the federal government. .

The proposed ordinance would amend the Code to remove the strict prohibitive language currently restricting such activity at transfer station. The amendment would allow transfer stations to accept and reload hazardous waste when written authorization is provided by the DEQ or evidence is provided that such activity is otherwise exempt under the federal hazardous program.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01.

3. Anticipated Effects

- Clarifies the system by eliminating the distinction between regional and local transfer stations as classes of facility and establishes new classes that consist of either publicly-owned or privately-owned transfer stations.
- Provides a single list of obligations for all privately-owned transfer station facilities that would be considered during franchise renewal.
- Maintains market continuity by limiting new transfer station entrants by prohibiting the acceptance of franchise applications for new transfer stations until January 1, 2016.
- Maintains minimal system disruption over two year period and allows decision-makers and stakeholders to focus on future transfer station configuration.

¹⁵ See Metro Code Chapter 5.01.125(d)(4) .

- Eliminates the strict prohibition of hazardous waste at transfer stations. Allows hazardous waste to be stored and reloaded at solid waste transfer stations if approved by DEQ or is otherwise exempt from the federal program.

4. Budget Impacts

The proposed ordinance is not anticipated to have an impact on the budget as it improves regulatory clarity.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 13-1306.

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